

Is Our Nation Serious About Educating Students with Disabilities?

Revolutionary Common Sense by Kathie Snow, www.disabilityisnatural.com

In 1975, Congress passed special education law, P.L. 94-142, now called IDEA (Individuals with Disabilities Education Act). Prior to this landmark legislation, millions of children with disabilities were not allowed to attend public school. Some states had their own special education laws, affording *some* children with disabilities *some* educational rights; other states had none. The new Federal law mandated that all children with disabilities, in all states, receive a free, appropriate public education. For many years, I (like millions of other parents) have been thankful for IDEA—knowing that, without it, my son might not have been able to attend public school. But I'm beginning to question just how serious our nation is about educating students with disabilities.

First, however, a little more background. Because public education is the responsibility of state governments, the Federal government essentially has no power or authority to tell the 50 states what they can or can't do regarding education (and other areas that fall under states' rights). What the Feds *can* do, however, is offer financial incentives if states will follow certain directives. Many of us remember a states'-rights uproar several years ago when the Federal government told states to lower the highway speed limit to 55 MPH because of the high number of traffic fatalities. Many states screamed and howled over the Federal government's intrusion. The response from the Feds? In essence, "Lower the speed limit or we'll cut your Federal highway funds." States quickly complied with barely a whimper.

This is basically how IDEA works. With the passage of IDEA, states were told that *if* they adhered to the new special ed law, the Federal government would

pay some of the costs of educating students with disabilities. Every state signed on for the Federal dollars. (But to date, Congress has never allocated the level of funding it originally promised in 1975.)

The basic premise of the law is that children who need special education services are entitled to a free, appropriate public education. The intent of IDEA is that a child with a disability be educated in the school she would attend if she didn't have a disability, in age-appropriate, general education classrooms. Children who are covered under IDEA are (based on the language of the law) supposed to *start out* in the least restrictive setting of the general ed environment (as described above), and they are not to be *removed* from that setting unless they're unable to learn in the general ed environment (with supports, assistive technology, curriculum modifications, etc.).

The law is written in a fairly straightforward manner (visit <http://idea.ed.gov>). Still, implementation of the law—from the very beginning in 1975—has been poor. Millions of children who receive special ed services are segregated in "special" classes and even "special" schools. In most cases, these placements are *not* the result of *removing* a child from the general ed environment, *after* the child proves she cannot learn there, with supports, accommodations, etc. Instead, segregated classes/schools (the most restrictive placement) were where these students were placed to begin with!

From the beginning, what many school districts did was to set up "programs," based on disability category. For example, a school district might have one program (a classroom) for students with physical

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disabilities; another program (classroom) for students with cognitive disabilities, and so forth. Rather than writing an “individualized education program” to meet a student’s unique needs, and bringing special ed services to the student in the general ed environment, schools made the student go to where the program is!

In addition, countless students go without assistive technology, curriculum modifications, and other supports mandated by law. Special ed—the way it’s currently practiced in most school districts—is a mess. There are many solutions, including better enforcement by the U.S. Department of Education, better enforcement by states, class action lawsuits, and/or school districts simply following the law.

Now, back to the bigger issue. The Disability Rights Movement shares many similarities with the Civil Rights Movement and the Women’s Movement. The scenarios are similar: discrimination based on a characteristic (skin color, gender, or disability). Federal laws have been enacted to address most of these issues (the Equal Rights Act, outlawing gender discrimination, failed to pass in the 1970s). Let’s take a closer look at these laws, and then compare them to IDEA.

When Congress passed the Civil Rights Act in 1964, it did so because a number of states refused to guarantee civil rights to people who were labeled Black. At the time, there were furious outcries over states’ rights—many said the Feds had no right to tell states what they could and couldn’t do. Some states reluctantly complied. Others, however, overtly refused, so the Feds forced compliance by sending in the National Guard, in order to protect the rights of people of color who had long been on the receiving end of state-sanctioned discrimination (and worse).

Section 504 of the Rehab Act prohibits discrimination by any entity that receives Federal funds. Thus, since 1973, hospitals, universities, local and state governments (which includes public schools), and a whole host of other entities are prohibited from discrimination on the basis of disability. The ADA

(Americans with Disabilities Act) is similar to 504, except that Federal funding is not an issue. The ADA prohibits discrimination based on disability by any business, public services (including local and state governments), and the telecommunications industry, irrespective of Federal funding. With 504 and the ADA, there were a few outcries about states’ rights, but the Civil Rights Act of 1964 had set the precedent that the Feds could (and would) “interfere” in *states’* rights in order to protect the rights of *individuals*.

In the eyes of many, IDEA is in the same league as the Civil Rights Act, Section 504, and the ADA. But I hope you’re seeing that it’s not, and this is why I’m questioning how serious our country is about educating students with disabilities.

With the Civil Rights Act and the ADA, the Feds basically said, “Follow these laws, period.” With Section 504, the Feds said to hospitals, universities, and local/state governments, etc., “We’re funding some of your activities or research, and because of that, you cannot discriminate on disability.” But with IDEA, the Feds basically said, “*If* you do what we say, we’ll give you some dough.” Do you see the difference?

What’s going on here? Are students with disabilities just a commodity (States: “We’ll only educate those kids if you pay us.”)? Or is the Federal government afraid (and unwilling) to be heavy-handed with the states because the educational rights of children with disabilities aren’t considered as valuable or important as the rights of others? Some might argue that since public education is the responsibility of state governments, the Feds should not interfere (the states’ rights argument). But it can also be argued that the Feds ran roughshod over states’ rights with the Civil Rights Act and the ADA (and aren’t we glad they did?). So why didn’t/can’t the same thing happen with the education of students with disabilities?

There is no “if” in other civil rights laws. Why is that “if” in IDEA? Shouldn’t we question this? In addition, the interpretation of IDEA (by judges issuing decisions after parents file lawsuits against schools) leaves many parents, as well as educators, scratching their heads wondering what the law really means.

The schools of the
country are its future
in miniature.

Tehyi Hsieh

And school district lawyers and other “anti-special ed advocates” often spend an enormous amount of time researching and/or counseling schools on ways to “get around” IDEA.

But here’s another issue to ponder, one that may appear to be in opposition of the points I just made. Between the protections of Section 504, the ADA, a state’s special ed laws (many states have enacted laws that mirror or enhance IDEA), *and* a state’s *general ed* laws, do we really need IDEA?

Historical reviews of the initial passage of special ed law in 1975 reveal that Congress had the best of intentions: to ensure that children were not excluded from public school based on the disability diagnosis. But all the specific provisions of the law have, in many ways, been counterproductive. Congress didn’t simply say to states, “You cannot discriminate on the basis of disability, period, and students with disabilities must be provided with accommodations, curriculum modifications, assistive technology, etc. to ensure they benefit from education in the same way as students who don’t have disabilities.”

It is our American habit if we find the foundations of our educational structure unsatisfactory to add another story or wing. We find it easier to add a new study or course or kind of school than to reorganize existing conditions so as to meet the need.

John Dewey

Instead, Congress wrote a whole new set of rules—a “separate set of rules.” And because of the way state departments of education, school districts, and in some cases, the courts, have interpreted these rules, there are many loopholes. Furthermore, compliance of IDEA essentially rests in the hands of parents or advocates, who must sue when they believe a school district is not complying with IDEA. (Yes, the U.S. Department of Education is supposed to monitor a state’s implementation of the law, and, in turn, states are supposed to monitor local school districts. But oversight of the law is spotty, at best, and there are no “IDEA police” or National Guard troops to arrest lawbreakers!)

While IDEA is supposed to ensure a “free, appropriate public education,” for students who receive special ed services, the education provided to many (if not most, depending on who you ask) students is substandard! (Witness the 70-75 percent unemployment rate of adults with disabilities, the low graduation rate

and low number of students with disabilities who go on to post-secondary education.)

Shouldn’t we wonder about the “free, appropriate public education” descriptor? These words don’t apply to students who *do not* receive special ed services. Do *they* get *more* than an “appropriate” education? “Appropriate” is a wishy-washy term in that it’s defined by the IEP (Individualized Education Program) team, composed of educators (in the majority) and the child’s parents (in the minority). If the majority doesn’t believe a child is capable of learning academics, an “appropriate” education may mean spending 12+ years in a “life-skills” or “resource”

room. Morally, how can it *ever* be “appropriate” to segregate and isolate students in a particular classroom or building based on disability? How is this any different from segregating students based on the color of their skin?

Some educators and some parents feel a segregated setting is appropriate because some students with disabilities are thought to be “unable” to learn in general ed classrooms—they’re just “too different.” (That’s one of the sentiments that helped maintain “white schools” and “black schools” not so many years ago.) But take a closer look at the diversity in most general ed classrooms and you’ll find kids of all ethnic backgrounds, some who use English as their second language, some who are “illegal aliens,” and more. And within this diverse group lies a broad spectrum of “academic abilities,” “intelligence,” or whatever you want to call it. So it seems you can be “different” and still be included in general education classrooms *unless the difference is a disability!*

Yes, within schools there are other “special programs” where some children may be pulled out for specific instruction. But there is no other *group* of children who, because they share one common characteristic, have a separate set of rules (IDEA)

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that, intentionally or not, lead to segregation and substandard educational outcomes.

In the landmark *Brown v. Board of Education* Supreme Court decision in 1954 on school desegregation, Chief Justice Earl Warren wrote about the effects of segregation (and I've made modifications to archaic words):

To separate (children) from others of similar age and qualifications...generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone... Segregation...has a detrimental effect upon the (segregated) children...(as it's) usually interpreted as denoting the inferiority of the (segregated) group. A sense of inferiority affects the motivation of a child to learn. Segregation... has a tendency to retard the educational and mental development of (the segregated) children and to deprive them of...benefits they would receive in an...integrated school system... We conclude that...the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

Aren't these same issues relevant to children who have been segregated on the basis of disability?

There is no quick and easy solution. But I wonder what might happen if parents used their existing *general ed* state laws, and the ADA or Section 504, if necessary, instead of IDEA. (I don't believe most states' *general ed* laws say "students without disabilities"—they probably just say "students." Thus, they apply to *all* students, right?) In doing so, parents may need to forego some of the highly-touted "benefits" specific to IDEA, such as school-provided therapy (which is usually not worth fighting for, anyway), school-provided assistive technology devices (which most schools don't provide in the first place), and others. Parents would probably need to work more closely with their child's general ed teachers on curriculum modifications and other strategies to meet the child's needs. This would

require a significant paradigm shift for many parents and educators, but change is always possible.

All this might sound like heresy to some; parents and advocates have fought long and hard for IDEA, but has it really achieved its goal? Are students with disabilities receiving the education they need for success as adults? Again, as it's practiced today in most school districts, *special education is just not working*. Furthermore, it seems that many parents (including myself, at times) have used IDEA as "permission" for our children to receive an education. We have not depended on or used (heck, we're not even familiar with) the educational laws and practices in our states that apply to *all children*. If we truly believe that children with disabilities are children, first, shouldn't we?

This article has been about the law, but here is another shift of gears: valuing and educating children with disabilities comes down to attitudes. In my son's inclusive elementary school, special ed law became irrelevant. The principal had made the decision to value, educate, and include all children, period. He and his staff adopted the "whatever it takes" mentality. As a result, there were no "special ed" rooms and, therefore, no segregation: all children were in general ed classrooms with the supports, accommodations, and AT devices they needed to learn and succeed. And their teachers received the supports they needed, too. In addition to being an award-winning school, it was a school where a "culture of caring" prevailed—all children learned and all children belonged. The principal didn't make the decision to create an inclusive school because of Federal law; he did it because it was the morally right thing to do.

I've opened a can of worms, one I give thought to on a daily basis. If enough of us think about these issues and talk to each other, we'll begin to take steps that can lead to progress and improvement. Then our actions will demonstrate that we're truly serious about educating students with disabilities and ensuring quality educational outcomes for all.