

The Rights of Students with Disabilities to Educational Self-Determination: A View from the United States

Part of the Seminar

**Autonomy, rights and children with special educational
needs: international perspectives**

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Outline

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I. Introduction

Education is well-established as a fundamental human
right

See, e.g.,

Universal Declaration on Human Rights (1948)

Convention on the Rights of the Child (1989)

I. Introduction

Yet, the rights of children with disabilities are neither as well-defined nor protected in these international covenants despite 2006 U.N. Convention on the Rights of Persons with Disabilities (CRDP)

I. Introduction

At that time, though,

- “only 45 countries ha[d] anti-discrimination and other disability-specific laws.” (U.N.)
- “[n]inety per cent of children with disabilities in developing countries d[id] not attend school....”
(UNESCO)

I. Introduction

2011 analysis by the World Health Organization, relying “on 2004 data ... estimates that 15.3% of the world population (some 978 million people of the estimated 6.4 billion in 2004) had a ‘moderate or severe disability,’

I. Introduction

...while 2.9% or about 185 million experienced ‘severe disability.’ Among those aged 0–14 years, the figures were 5.1% and 0.7%, or 93 million and 13 million children, respectively.”

I. Introduction

Against this background, aware that the U.S. Supreme Court does not incorporate international documents into its judgments nor has the U.S. Senate ratified the Convention on the Rights of the Child or the CRDP this paper examines the significant educational rights of U.S. students with disabilities seeking self-determination

I. Introduction

The Individuals with Disabilities Education Act (IDEA) provides significant, if imperfect, protection as seen in the vast amount of litigation over the rights of students with disabilities by acknowledging their participation rights in decisions about their futures.

I. Introduction

Based on the most recent IDEA data, “[i]n 2015–16, the number of students ages 3–21 receiving special education services was 6.7 million, or 13 percent of all public school students.” (National Ctr. for Educational Statistics)



II. IDEA

A) History

1893 Massachusetts' Supreme Judicial Court upheld a student's exclusion for being "weak-minded."

II. IDEA

1919 Supreme Court of Wisconsin affirmed the exclusion of a student whose paralysis caused him to speak hesitatingly and drool uncontrollably even though he had the academic ability to benefit from school because “his physical condition and ailment produce[d] a depressing and nauseating effect upon the teachers and school children.”

II. IDEA

- *Brown v. Board of Education* (1954) ushered an era of equal education opportunities
- Two federal class action suits provided the impetus for the development of the law of special education

II. IDEA

Pennsylvania Association for Retarded Children v.

Pennsylvania (1971, 72)

Mills v. Board of Education of the District of Columbia

(1972)

II. IDEA

II. B) Key Elements

(A) In general

- The term “child with a disability” means a child-
- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

II. IDEA

(ii) who, by reason thereof, needs special education and related services.

20 U.S.C. § 1400(3)

II. IDEA

Eligibility (reiterated)

a) 3-21

b) specifically identified disability

c) need special education (aka IEP)

d) need related services

II. IDEA

- 1) FAPE **cf.** *Rowley v. Board of Education, Endrew F.*
- 2) LRE **cf.** *Timothy W. v. Rochester* (zero reject)
- 3) aged 3-21
- 4) parental input
- 5) due process ... and attorney fees = KEY



III. Self-Determination Rights

A) Transition Planning

Must begin “not later than the first IEP to be in effect when the child is 16, and updated annually thereafter.”

And

III. Self-Determination Rights

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities,

III. Self-Determination Rights

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests;

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 U.S.C. § 1401(34);

34 C.F.R. § 300.43(a)(1).

III. Self-Determination Rights

See Gibson v. Forest Hills Local School District Board of Education [Ohio] (6th Cir. 2016) (affirming that a board's failure to invite a student to transition-related IEP meetings because she was old enough to do so, or to notify her parents that she was welcomed if she wanted to attend, violated the IDEA)

III. Self-Determination Rights

See Lessard v. Wilton Lyndeborough Coop. School District (New Hampshire, 1st Cir. 2008) (affirming that while transition plans must be included in the IEPs of all students once they reach 16, this does not mandate a stand-alone plan. The court agreed that an IEP that integrated transition services throughout a child's program satisfied the IDEA)



III. Self-Determination Rights

B) Student Records

The IDEA transfers parental access rights to students, granting them sole control over their educational records on turning eighteen unless they are adjudicated incompetent under state law. 20 U.S.C. § 1415(m)

III. Self-Determination Rights

Under this part of the IDEA, when students with disabilities who are not adjudicated incompetent under state law reach the age of majority, school officials must notify them and their parents that parental access rights were transferred to their children. 20 U.S.C. § 1415(m)(1).

III. Self-Determination Rights

The IDEA and its regulations, along with the Family Educational Rights and Privacy Act (FERPA), greatly impact on the delivery of special education because they apply with equal force to parents and eligible students with disabilities.

III. Self-Determination Rights

Together, these laws have two primary purposes: to grant parents and eligible students, meaning those over eighteen, access to their educational records and to limit the access of outsiders to these records...but a variety of exceptions apply granting access to 3d parties.

III. Self-Determination Rights

While this certainly provides students with a measure of independence, one can wonder about the wisdom of granting students sole control of their records, especially if they move away from home to attend institutions of higher education.

III. Self-Determination Rights

One cannot help but to wonder whether parents and students should have shared access until such time as students are full emancipated, living independently.

DISABILITY

COLLECTION



IV. Recommendations

First, consistent with internationally accepted norms, leaders must act to safeguard the educational rights of students with disabilities by enacting laws, policies, and procedures to protect and enhance the rights of these students to help them to reach their full potentials by engage them as active participants in planning for their futures ...

IV. Recommendations

Second, members of committees assigned the task of developing policies aimed at enhancing participation of students with disabilities should be selected from among a broad representation of stakeholders including administrators; teachers; member of a governing board; school attorney; parents; and, a student in high school who has taken part in the transition planning process.

IV. Recommendations

Third, national leaders must provide adequate funding to help create schools to meet the needs of students with disabilities.

Fourth, educational leaders should offer regular professional development activities for all staff members to help them better understand the rights of students with disabilities ...

IV. Recommendations

Fifth, educators should work with students as they “age out” of special education to apprise them of their rights, updating them when changes in the law occur.

Sixth, boards should offer information sessions for parents to help them better understand the rights and needs of their children.

IV. Recommendations

Seventh, higher education must enhance preparation programs, ensuring that they are at the “cutting edge” of reform to best help to educate students with special needs.

Eighth, leaders, should schedule conferences/ meetings on the rights of students with disabilities to obtain input from all parties interested in helping to ensure equal educational opportunities for students with disabilities.

IV. Recommendations

Ninth, in light of the rapid pace at which change occurs, leaders should review their policies regularly to ensure they are up-to-date with the latest developments in both the law and special education so as to better serve their students.



V. Conclusion

- It appears that educators in many nations have advanced the cause of protecting the educational rights of students with disabilities.
- Yet, until all students in need of special education receive appropriate programming, then the struggle for equal educational opportunities must continue.

V. Conclusion

Thank you for listening and participating!