PL 94-142:
Policy, Evolution, and Landscape Shift

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PL 94-142 fundamentally changed the lives of children with disabilities, families, and professionals. The policy opened school doors for all children, regardless of the type or degree of their disability. This article examines the policy in its historical context with a framework grounded in social sciences. The historical analysis is helpful in understanding some of the more recent changes, shifts, and dynamics in special education. The article begins with a review of the legislative road of PL 94-142 at the federal level, and then examines the policy's evolution and the political landscape shift over the decades. I conclude by discussing the implications of these changes for teacher education.

History of PL 94-142

P.L. 94-142 grew out of the courts, namely the *Pennsylvania Association of Retarded Citizens* (*PARC)* and *Mills* cases (Melnick, 1995).[1] In both cases, parents of children with disabilities challenged the school systems in an effort to gain access to public education for their children. Until the mid 1970's, schools could say 'no' to educating children whose abilities were different. Students with disabilities were systematically denied access to education for a variety of reasons (e.g., the nature of their disabilities; the prevailing thought that segregation was appropriate),

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thus spending their days at home or segregated centers run by charities and not-for-profit organizations (Biklen, Ferguson & Ford, 1989). On the other hand, students with learning and other invisible disabilities, who were at school but were not formally diagnosed, had no access to supplemental services and supports, and were left on their own devices to 'make it' or fail (Turnbull & Turnbull, 1982). PL 94-142 ended the systemic, institutionalized exclusion (Biklen et al., 1989). Education of children with disabilities—just like any children, including those from various ethnic and linguistic communities—was now the responsibility of society. Segregation or exclusion based on ability was no longer acceptable (Silverstein, 2000).

An historical review reveals that the political battle to gain educational access for students with disabilities started with court cases across the country. By 1973, 27 right-to-education lawsuits were pending or a decision had been recently rendered in 21 states (Melnick, 1995). These cases were brought forward by groups of youngsters and their families. Most cases argued that denying access to schooling was a violation of due process of law under the U.S. Constitution. Despite court victories gained by special education advocates in the early 1970s, there was no constitutional provision for "free appropriate public education" (this term was used in *PARC* to define special education). There was also great variation in how the states were (or were not) beginning to develop policies for students with disabilities (Biklen et al., 1989). In addition, advocacy organizations were losing a few cases in federal courts. For example, the federal court in Michigan ruled against the students and parents in 1972, arguing that since the state had enacted a public law that required programs for children with disabilities (although not necessarily in a public school), educational access for these students was not denied in the case because of this law (*Harrison v. Michigan*, 350 F. Supp 846 [1972]). Advocates also feared that the Supreme Court would reject a constitutional basis for special education, should a case be appealed to the highest court (Melnick, 1995). The Supreme Court had already announced in a school finance case in 1973 that the U.S. Constitution did not establish a right to public education (*San Antonio v. Rodriquez*, 411 U.S. 1 [1973]).

The advocacy community, which had moved a "right to education" agenda through state policies and court cases, thus began to appeal to Congress for federal legislation on special education. The timing was right—a policy window was open—as other important social policies had been passed in the early 1970's (Kingdon, 1995; Melnick, 1995; Scotch, 2001). These included the Occupational Safety and Health Act of 1970, Child Development Act of 1971, and Section 504 of the Vocational Rehabilitation Act of 1973, which outlawed discrimination on the basis of disability in programs receiving federal assistance.

The advocates found a champion for their cause in Congress. Senator Harrison Williams (D-NJ) had a record in disability policies and had been active regarding issues such as accessible public transportation. Senator Williams, along with Senator Jennings Randolph (D-WV, Chair of the Senate Subcommittee on the Handicapped), introduced a bill which offered incentives to states to expand education for children with disabilities (Melnick, 1995). What is remarkable about this bill, which became the foundation for special education as we know it today, is that it was written by a policy network coordinated by Senator Williams. Senator Williams' staff worked particularly closely with the Council of Exceptional Children (CEC) in crafting the legislative language (Melnick, 1995). CEC had been active in the early court cases, by helping parents file suits and providing testimony in trials (Itkonen, 2004).

While there was a national agenda in the 1970s to enact special education legislation, at the grassroots level, parents were at the core of the power of the advocacy movement. For parents, advocacy is characterized by "politics of passion," as the stakes are high and a decision has direct impact on the well-being of the child and the family (Itkonen, 2007). Most disability advocacy organizations started as local parent groups (Itkonen, 2004). These parents mobilized to support each other and to advocate for services. As United Cerebral Palsy's history explains:

> Parents who raised their children at home [in the 1940's] learned that few services and supports were available to help their kids lead full, productive lives in the community. With little contact between families of children with cerebral palsy, many parents felt isolated, helpless, and alone. (http://www.ucp.org)

Similarly, the history of The Arc (formerly the Association of Retarded Citizens) suggests how wide-spread these groups were:

> To name the time and place of the beginning of this movement is like trying to isolate the first growth of grass. For truly, this is a grassroots movement. Parents, in reaching out—seeking resources to help them meet this critical personal and family problem [of lack of services]—found each other. Small groups huddled all over the country, and as nearly as can be told, the movement had its beginning in the early 30s. (Anonymous author, from the History of The Arc, at http://www.thearc.org/NetCommunity/Page.aspx?&pid=272&srcid=270)

At the federal level, the special education bill generated little opposition in Congress. The 1970s was an era in which Congress began to emerge as an institution initiating substantial amounts of social policy

(Scotch, 2001). Interest groups representing school administrators and teachers were further convinced that reforms were inevitable. After all, the right to education had been established in various court orders across the country, and many states had already enacted special education policies. Facing the inevitability of reform, school professionals wanted to ensure adequate revenues (Melnick, 1995).

However, parent and professional groups disagreed with one another over the implementation monitoring and the compliance mechanism of the bill. Disability advocates preferred appeals procedures through which parents could file a due process hearing to challenge a school district's decision. Education groups, in contrast, vehemently opposed the contractual nature of the individualized education program (IEP) and other due process provisions. According to Melnick (1995), this matter resulted in a deadlock in conference committee and threatened the Act's passage, until Representative George Miller (D-CA) drafted a compromise solution that was acceptable to all parties. Interestingly, the groups invited to the table during these deliberations included CEC, The Arc, United Cerebral Palsy, and the National School Board Association (Melnick, 1995). These groups' legislative directors were visible at the national level at the time, and enjoyed the trust of policy makers. Hence, these four directors sat down with policy makers and crafted a solution on which both advocates and school boards agreed.

There was one final hurdle to be conquered. President Ford had opposed the bill publicly and had threatened to veto it because the implied costs of a national special education policy were too high. Persuaded by his aides, he finally signed the bill on November 29, 1975, thus enacting PL 94-142 and the conception of free appropriate public education.

Evolution and Landscape Shift

By the late 1980s, all states had adopted the federal special education policy. There were no fundamental changes in the law for many years. Policy makers referred to the changes as "tinkering around the edges—a word here, a word there" (Egnor, 2003; Meyer, 1997; Itkonen, 2004, p. 308). But in the 1990's, the focus in special education slowly shifted from access to outcomes, partially as a result of the standards-based reform and accountability movements in general education (McDonnell & McLaughlin, 1997). Goals 2000, enacted by Congress in 1994, encouraged states to adopt content and performance standards. Improving America's Schools Act, the reauthorized Elementary and Secondary Education Act of 1994, further specified that in order for schools to receive Title I funds, states were required to submit plans for challenging content and performance standards, and assessments of students meeting those standards. The move from access to results was also an evolution within special education itself. Once children had access to education, the natural progression was to focus on what they were learning while in school.

In 1995, the general education community argued that it was time to open up the special education law, and transform it from an access law to a quality and an outcomes statute. Some of the reasons behind this included a concern for funding, the rising cost of special education, and the need for teacher training to meet the diverse needs of students (Egnor, 2003). Major changes were made to the Act for the first time in its history in the 1997 reauthorization. These included student participation in statewide exams and a general education teacher presence at IEP meetings. As the general education community got more involved, so did general government groups who were interested in finding solutions to the funding of special education. For example, groups such as the National Governors' Association as well as mayors and state legislature groups lobbied and testified before Congress (Egnor, 2003; Itkonen, 2007). In 1975, Congress had said that it would pay 40% of the excess costs to states and districts. This promise has not been met as federal funding is at about 18%.[2] Bipartisan coalitions continue to advocate for full federal funding.

Besides the change from access to outcomes, another major landscape shift in the past thirty years occurred within the disability community. The community has experienced a proliferation of new groups and interest-specific organizations (e.g., groups advocating for students with Attention Deficit and Hyperactivity Disorder (ADHD) or autism, or representing the interests of specific professions such as school social workers). For example, The Consortium of Citizens with Disabilities—a major public policy voice of the disability community—consists of over 100 organizations today. One leader who was involved in the 1975 enactment of the law, noted:

> In the old days [1970s] there were a few of us and you could hold a coalition meeting in a telephone booth. In the 1990s, you needed a hall... (Itkonen, 2004, p. 245)

Interests are likely to mobilize around issues located around the details of a policy framework rather than at the "core" of the policy idea (Kelman, 1987; Majone, 1989; Weible, 2005). Hence, while most people would agree that students with disabilities have the right to free appropriate public education, policy conflicts occur once the issue moves to the specifics (e.g., in what setting special education should take place or what to do about students who are "disruptive"). Specificity implies assigning costs and benefits and thus invites organized interest participation from those who benefit and from those who do not (McFarland, 1992).

A third change is the generational shift that has occurred in parent advocacy organizations (Itkonen, 2005). Many original leaders of parent groups are now in their 60s and 70s, and their children in their middle ages. These parents fought the legislative battle to pass a statute that would allow their children access to public schools. The new generation of parents consists of people whose children entered school after the existence of special education. They do not have the personal experience of what life was like for children with disabilities before public education and due process provisions were granted. For them, not everything in the statute is of importance, whereas the initial pioneers of the statute want to protect it. For example, some new parent groups supported the proposed three-year IEP in the House bill in the 2004 reauthorization (H.R. 1350), whereas older members of some organizations viewed it as a violation of rights, taking the monitoring away from the hands of parents (Itkonen, 2004). Similarly, groups that were active during the 1970's tend to advocate for full participation and inclusion of students with disabilities (e.g., The Arc, TASH—formerly the Association of People with Severe Handicaps). Newer parent groups, particularly some groups representing children with autism and their parents, advocate for separate programs and even schools.

This generational shift has occurred not just in the parent community but in Congress as well. One national disability organization leader who was involved in the passage of PL 94-142 explained the shift as a decrease in advocacy power base:

> One huge change has been the politicians who are making decisions. You go back and look at the make up of the Senate now and in 1974-1975; there are only 25 Senators left and a good number of them were in the House [at the time]. And you go to the House and you're down to a couple of dozen members, less than ten percent of the House were there and are vested in this from the perspective that hey, I made this happen, because it was a big deal back in 1975. (The) number of politicians who have that direct interest because they were there, and feel the need to protect what they did, is lowering in every Congress for obvious reasons…people die, people retire, people lose elections…all those typical reasons. The power base of the people who are disability champions erodes over time. (Itkonen, 2004, p. 312)

The implication of a decreasing power base in Congress was evident in the House bill (H.R. 1350) in the 2004 reauthorization. The bill abolished parents' due process rights in discipline disputes, giving full authority to school administrators to suspend or cease educational services for a student with disabilities. The matter was reversed in the Senate, which still has several members who were elected officials in the 1970's when PL 94-142 was enacted. The enacted Individuals with Disabilities Education Improvement Act of 2004 kept the parental due process rights, but also expanded school administrator authority in suspending students or placing them in alternative educational settings. Future reauthorizations will tell whether a decrease in a power base will prompt legislators to pass amendments that benefit schools' interests versus parents' rights.

Yet another evolution in special education has been the increased involvement of the private sector (Itkonen, 2004). While private schools were the first efforts to provide services for individuals with disabilities, and have maintained their place in the continuum of educational placements, the private sector has become more and more involved in the delivery of education in public schools. For example, chronic personnel shortages in certain professions have resulted in school districts entering in contracts with private agencies (Arner-Costello, personal communication, April 2, 2007; Bednersh, personal communication, April 1, 2007). The hired teachers or speech therapists, for example, are thus not staff of a school district, but contracted through a third-party agency. The school district often pays a higher salary for their privately recruited staff than district employees in alike positions. Many private enterprises are also involved at the student-level by providing education to a student with disabilities. If such arrangements are the result of a due process ruling or a mediation agreement, the school district often pays market rates for the private agency's involvement (Arner-Costello, personal communication, April 2, 2007; Bednersh, personal communication, April 1, 2007). More recently, Arizona, Florida, Ohio and Utah have passed legislation to provide school vouchers exclusively for students with disabilities—another example of private sector involvement.

With the recent reauthorization of Individuals with Disabilities Education Improvement Act of 2004 and No Child Left Behind Act (NCLB), special education is slowly being re-framed from a civil rights statute to an education law. State policies such as the California High School Exit Exam are further pushing special education under education policy by requiring the same graduation standards for students with and without disabilities. The Supreme Court also recently ruled that parents who challenge the school district bear the burden of proof in the case and that their expert witness' fees cannot be recovered.[3] These decisions seem to further move special education from a civil rights frame toward a broader educational policy frame.

The future of special education remains to be decided. Further generational changes are likely to affect the dynamics within the disability community and among advocates and policy makers. Increased emphasis on standards and accountability, and the inclusion of special education in these and other future educational reforms will necessitate an on-going dialogue about how educating children with disabilities fits in the education of all students, and vice versa. Or does it? Is special education a civil rights statute, or does it belong under the broad umbrella of education policy?

Implications for Teacher Education

What are the implications of policy evolution and landscape shift for teacher education? One clear implication from the previous historical discussion is that the evolving nature of special education places on-going demands on teacher education. Alignment with NCLB necessitates a dialogue between special and general educators on how to achieve high standards for students with disabilities while meeting their unique educational needs and providing appropriate accommodations (Egnor, 2003). As policies such as response-to-intervention (RTI) become more widely implemented, this dialogue becomes even more critical since RTI presents a continuum of interventions between general and special education (Fuchs & Fuchs, 2005; Fuchs, Mock, Morgan & Young, 2003). Institutes of higher education need to consider how to align general and special education teacher education programs to prepare candidates for these types of joint efforts they will be expected to perform at the school site.

Meeting the needs of diverse learners also affects special education teachers. Congress and the Department of Education have included new disabilities under special education eligibility (e.g., autism and traumatic brain injury in the 1990 reauthorization; ADHD in the 1999 regulations; Tourette's Syndrome in the 2004 reauthorization). The common practice of heterogeneous case loads in many school districts require that special educators entering the field have skills in teaching learners with a variety of disabilities. A teacher certified for a "mild/moderate" credential may thus have students who range from having learning disabilities, mental retardation, emotional disturbance, autism-spectrum disorders, to traumatic brain injuries. This school based practice has implications for teacher education, and is a complex process that may involve educating generalists versus specialists (See Richards et al., this issue).

Further, just as special education has evolved over the decades from an access to an outcome law, teacher education has recently faced similar accountability demands. Under IDEA 2004, special educators now have to show that they are "highly qualified" to teach each subject matter which they teach. The implication for teacher education is to decide whether and how to build those requirements into the credential programs. Yet, a complicating factor is that many special educators, particularly beginning teachers in secondary schools, might be assigned a variety of subjects to teach that vary from year to year. An implication for teacher education is to determine how to prepare highly qualified candidates under NCLB and IDEA 2004, given the uncertainty and constraints of subject matter assignments at the school level.

A final implication for teacher education, stemming from the landscape shift rests with recent policy discussions about the effectiveness of traditional teacher education at institutes of higher education (Cohen-Vogel, 2005). One side of the argument about how to increase teacher quality supports accreditation, licensing, and certification to foster teacher quality and educational equity among disadvantaged and advantaged students (Darling-Hammond, 2000). The other side of teacher quality argument portrays certification requirements as the problem, not the solution (Ballou & Podgursky, 2000). These authors argue that teaching quality will improve only when candidates, who can show subject matter competence by holding a Bachelor's degree, can be hired from the open market. In the view of these authors, pedagogy is not necessary in teacher education. This central question—what constitutes quality teaching?—is of crucial importance to teacher education. Further, the guiding question for teacher education is to what extent pedagogy matters. Put another way, is special education about content, methods, or a combination thereof? Different answers to these questions have policy implications for how teacher education is going to be conceptualized and organized in the changing policy landscape of special education.

Notes

[1] *Mills v. Board of Education,* 348 F. Supp. 866 (D.D.C. 1972); *Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania,* 343 F. Supp. 279 (E. D. Pa., 1972).

2 http://www.nsba.ORG/SITE/DOC.ASP?tRACKid=&sid=1&did=41051&cid=892&vid=2; http://www.nea.org/lac/idea/images/mandatory2006.pdf; http://democrats.senate.gov/dpc/dpc-new.cfm?doc_name=fs-108-2-10

[3] *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Arlington Central School District v. Murphy,* 2006 U.S. Lexis 5162

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