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Special Education Law and Practice: Cases and Materials (2016)

Deborah N. Archer
New York Law School

Richard D. Marsico
New York Law School, richard.marsico@nyls.edu

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Cases and Materials

Deborah N. Archer
Professor of Law
New York Law School

Richard D. Marsico
Professor of Law
New York Law School

Carolina Academic Press
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To my husband, Richard, and to my boys, Ellis and Ethan.

—DNA

To JMB, for dedicating three decades of her formidable legal talent to the needs of children, and to KMD, a very special educator.

—RDM

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Chapter 1

The Evolution of the Right to a Free Appropriate Public Education for Children With Disabilities

Introduction

Public schools in the United States have not always been open to all children. Using the "separate but equal" doctrine, public schools excluded Black children from schools for white children until 1954, when the Supreme Court ruled in *Brown v. Board of Education* that this violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Less well-known is the discrimination that public schools practiced against children with disabilities. Until as recently as the 1970s, public school officials, backed by state statutes and judicial decisions, excluded children with disabilities from public schools, admitted them to schools but segregated them from other children, or placed them in general education classrooms without providing them educational services tailored to their needs. As a result, millions of children with disabilities received little, inadequate, or no education at all.

This began to change in the 1970s. Fueled in large part by *Brown*, a social movement that challenged the educational treatment of children with disabilities grew. The movement led to two landmark federal court cases, *Pennsylvania Association for Retarded Children v. Pennsylvania* ("*PARC*") and *Mills v. Board of Education of the District of Columbia* ("*Mills*"), which in 1972 resulted in consent decrees that granted children with disabilities the right to attend public schools and receive an appropriate education while there. Following *PARC* and *Mills*, Congress passed the Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (EAHCA), which offered federal financial assistance to states that agreed to provide special education to children with disabilities consistent with the terms of the EAHCA. The EAHCA, which evolved into and is now known as the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482 (2012), established the framework for contemporary special education law.

This chapter traces the history of the law relating to the education of children with disabilities from the time public school officials had virtually unfettered discretion to exclude them from school, to today's regime that recognizes the right of a child with a disability to a free appropriate public education in the least restrictive

environment. Section One contains examples of state court decisions between 1893 and 1958 that involved children whom local public school officials excluded from school because of their disabilities. Section Two highlights *Brown*, which prohibited intentional racial segregation in public schools and helped set the stage for litigation that successfully challenged the exclusion of children with disabilities from public schools. Section Three features *PARC* and *Mills*, which recognized a legal right to education for children with disabilities. Finally, Section Four describes the congressional response to discrimination against children with disabilities, culminating in the IDEA.

Problem

As you read through this chapter, consider the following:

1. You are the principal of a public elementary school in 1950. C.M. comes to your office to enroll her son, D.M. You send D.M. to the school psychologist who administers an IQ test. According to the result, D.M. has an IQ of 70. In your experience, children with an IQ of 70 cannot manage grade-level work. As a result, they fall behind, have behavior problems, and disrupt other children in the classroom. Are you required to admit D.M. into the school? If not, what factors would you take into account in making your decision? What decision would you make? If you do admit D.M., where would you place him?

2. You are now an attorney, also in 1950. J.K., D.M.'s father, comes to see you. He tells you that the local public school refused to admit D.M. because his IQ is too low. He wants you to file a lawsuit to get D.M. admitted. What would you do? What legal theories supporting D.M.'s admission would you develop?

3. Now you are a judge in 1950. J.K. has filed a lawsuit on behalf of D.M. seeking D.M.'s admission to public school. How would you rule? On what legal grounds?

4. How would your answers to questions one through three change if it were 1955? Today?

5. It is 1950 again, and you are the legislative director for the U.S. Representative representing D.M.'s Congressional district. The representative has heard about D.M.'s case, and constituents and advocacy groups are urging him to "take a stand" to protect children with disabilities. The school district is urging the representative to take a "hands-off" approach to education issues that are better left to the judgment of educators. The representative wants you to draft a statute that would help children like D.M. attend public schools while allowing educators the discretion to make decisions about the substance of D.M.'s education. What would you include in such a statute? Would your answer change if you were the legislative director for a state legislator?

Section One
The Exclusion of Children with Disabilities from Public Schools

Watson v. Cambridge

157 Mass. 561 (1893)

KNOWLTON, J. The records of the school committee of the defendant city set forth that the plaintiff in 1885 was excluded from the schools "because he was too weak-minded to derive profit from instruction." He was afterwards taken again on trial for two weeks, and at the end of that time again excluded. The records further recite that "it appears from the statements of teachers who observed him, and from certificates of physicians, that he is so weak in mind as not to derive any marked benefit from instruction, and, further, that he is troublesome to other children, making unusual noises, pinching others, etc. He is also found unable to take ordinary, decent, physical care of himself." The evidence at the trial tended strongly to show that the matters set out in the records were true.

The defendant requested the court to rule that if the facts are true which are set forth in the records of the committee, as the cause of the exclusion of the plaintiff from the public schools, the determination of the school committee thereon, acting in good faith, was final, and not subject to revision in the courts. The court refused so to rule, and submitted to the jury the question whether the facts stated, if proved, showed that the plaintiff's presence in school "was a serious disturbance to the good order and discipline of the school."

The exceptions present the question whether the decision of the school committee of a city or town, acting in good faith in the management of the schools, upon matters of fact directly affecting the good order and discipline of the schools, is final, so far as it relates to the rights of pupils to enjoy the privileges of the school, or is subject to revision by a court . . . .

Under the law the school committee[s] "have the general charge and superintendence of all the public schools in the town" or city. Pub. St. c. 44, § 21. The management of the schools involves many details; and it is important that a board of public officers, dealing with these details, and having jurisdiction to regulate the internal affairs of the schools, should not be interfered with or have their conduct called in question before another tribunal, so long as they act in good faith within their jurisdiction. Whether certain acts of disorder so seriously interfere with the school that one who persists in them, either voluntarily or by reason of imbecility, should not be permitted to continue in the school, is a question which the statute makes it their duty to answer; and if they answer honestly, in an effort to do their duty, a jury composed of men of no special fitness to decide educational questions should not be permitted to say that their answer is wrong. We are of the opinion that the ruling requested should have been given.

Exceptions sustained.