

**Lessons for All of Us:  
Protecting the Right to Education for Persons with Disabilities**

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**Foreword**

The National Council on Disability is an independent Federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities regardless of the nature or significance of the disability and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. This topic paper is part of a series of topic papers designed to provide brief background information on United States disability policy for use by the delegates in their deliberations on the United Nations Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

**I. Introduction**

In February 2004, Inclusion International (II), a non-governmental organization (NGO) comprised of over 200 organizations worldwide that advocates for the rights of people with intellectual disabilities, announced that an estimated 98 percent of the world's children who have disabilities are not in school.<sup>1</sup>

Fifty-six years ago, the 1948 Universal Declaration of Human Rights affirmed the right to education as a right belonging to every individual. The international community has long realized that if we deny an individual the right to an education we condemn that person to a lifetime of exclusion and marginalization and perpetuate a cycle of suffering and poverty for future generations. Without education it can be insurmountably difficult for people to gain employment, earn a living for themselves and their family, contribute meaningfully to their society, and fulfill their potential. Education provides the knowledge and the means for people to advocate for themselves, their families, and their communities. Thus, education is a fundamental human right, the foundation on which many other freedoms and rights are built.

The first section of this paper provides a brief overview of the international agreements and legal frameworks that affirm education as a right for all people, and then reviews those that specifically address the educational needs and concerns of the disability community. The second part of the paper provides a roadmap of the struggle undertaken by the disability community in the United States to have access to a free education centered on the needs of the individual. The purpose of using the United States as a case study is not to make the argument that the laws of that country should be used as a model, or that they are superior. Instead, this paper seeks to illustrate the process by which the disability community in the United States achieved a measure of protections and rights in the law to access inclusive education, and to demonstrate the continuing struggle in enforcing these laws.

## **II. International Frameworks**

### **International Conferences and Agreements**

#### **1. Protecting the Right to Education**

In 1990, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) organized the "World Conference on Education for All" in Jomtien, Thailand. Delegates from 155 countries and representatives from 150 organizations attended the conference and agreed to work to end illiteracy by the end of that decade and to universalize primary education for all children. The same countries met again in Dakar, Senegal, at the "World Education Forum" in April 2000. The participants adopted the Dakar Framework for Action reaffirming their support to meet their goal of education for all by 2015.

The most recent report from the Working Group on Education for All was released in July 2004 and recommended that in order to meet the Education for All goals, policy formulation at the national level needs to be strengthened. The working group called for a wide-ranging dialogue to take place with all stakeholders in the design and implementation process. The complete agenda of Education for All includes education as a goal for young children and adolescents, and recognition of the fact that adults who learn written communication skills are able to bring greater benefits to their families.

## **2. Protecting the Education Rights of Persons with Disabilities**

In 1982, the United Nations General Assembly adopted the World Programme of Action Concerning Disabled Persons (WPA). The goals of the WPA were to increase efforts to prevent disability, enhance rehabilitation, and open opportunities to persons with disabilities so that they might fully participate in the social life of their communities and contribute to national development. Most importantly, the WPA redefined the issue of disability as a human rights issue. Out of the WPA, the United Nations developed the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules), which were adopted by the United Nations General Assembly in 1993. The Standard Rules are not legally binding but they

emphasize to policy makers the importance of developing inclusive policies, creating equal opportunities, and actively seeking the participation of persons with disabilities in order to benefit the individual and society as a whole.

Rule 6 of the Standard Rules is dedicated to the protection of the right to education for persons with disabilities:

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system. <sup>2</sup>

The Standard Rules provided the most detailed and explicit requirements for education for persons with disabilities at the time they were adopted, and today they still form a guidepost for the implementation of international education protection mechanisms.

As part of its efforts to promote the agenda for Education for All, UNESCO also organized the World Conference on Special Needs Education in Salamanca, Spain in June 1994. The conference promoted the approach of inclusive education for people with disabilities and was supported by delegates from 92 governments and 25 international organizations. The outcome of the conference was the "Salamanca Statement on Principles, Policy and Practice in Special Needs Education," which affirmed many of the principles upheld by the Education for All conference, including that "every child has a fundamental right to education" and that "those with special educational needs must have access to regular schools which should accommodate them within a child-centered pedagogy capable of meeting these needs."

The "Salamanca Statement" is broad in its goals and specific in its recommendations in the Framework for Action, which calls on national and international decision-making bodies to implement the goals of inclusive education for all. However, in the ten years that have passed since the "Salamanca Statement" was issued, its goals have not been realized.

## **International Human Rights Law**

The American Convention on Human Rights came into force in 1969. Article 26 of the American Convention, titled “Progressive Development,” sets forth the goal of protecting economic, social, and educational rights under the governance of the Organization of American States. However, it does not specifically enumerate education as a right for all people or carve out specific protections for the disability community. The counterpart to the American Convention in the European Community is the European Convention on Human Rights, which was signed in Rome in 1950 and clearly articulates in Article 2 that “no person shall be denied the right to education.” The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which has not yet been ratified, contains the most articulate protection of education as a right for all persons:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.<sup>3</sup>

The ICESCR lists a number of specific goals for achieving the right to education including free, compulsory primary education for all children and continuing education that is free and accessible to all persons.

## **The International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities**

In drafting the Convention, the experiences of individual nations can be useful in determining what kinds of policies work. This is not to say that national laws can simply be replicated in other countries because of their apparent success at home; the legislative process is a reflection of the different cultural norms of each country. The United States has had long-

standing laws against discrimination and unequal treatment for its citizens. However, the enforcement of those laws has had a checkered history.

The laws of the United States that have served to define and protect the right for persons with disabilities to have access to a free and appropriate education are an example of the determination of the disability community to have their voices heard and their needs recognized. They are also testament to the power of the courts in the country to bring about sweeping changes to the nation's educational system. These changes in culture and in the courts have been reflected by the country's legislatures over the last 30 years. The end result is an imperfect system that is constantly being corrected, amended, and redefined by disability advocates, the courts, and the legislature. Perhaps the most valuable lessons for countries looking at the process in the United States derive from the mistakes that have been made along the way. If one lesson stands out from the current state of the legislation and its interpretation by the courts, it is that good intentions do not suffice. There must be real force behind the stated objectives to ensure that the commitment is real and the goals are met.

### **III. The Development of Disability Education Law in the United States**

#### **Changing Perceptions of Disability**

In 2004, the United States celebrated the fiftieth anniversary of the *Brown v. Board of Education* decision by the United States Supreme Court that ended racial segregation in America's schools.<sup>4</sup> The *Brown* decision was handed down in 1954, but it would be another twenty years before children with disabilities would have their right to education protected by the Court and the legislature. Prior to 1975, children with disabilities did not have access to a free public education appropriate to their needs.

“While some special programming was available in separate settings, such as schools for blind children or deaf children, children who were mentally retarded or who had serious behavior disorders were more likely to be institutionalized and given minimal, if any, educational programming.”<sup>5</sup> If the resources of the family were sufficient, children with disabilities were either educated in private schools that would accept them, or at home by their parents and private tutors. In some instances children with disabilities were sent to institutions where they were housed in appalling conditions and received little, if any, educational or vocational training. Between these two extremes, were children whose needs were not being met by the public education system either because they were excluded on the basis of their disability, or, the needs created by their disability were ignored.

The movement advocating for inclusion of persons with disabilities into the American education system was encouraged by the decision in *Brown v. Board of Education*, where the Court rejected the notion that educational facilities and opportunities for black students could be separate yet equal. Advocates recognized that the same arguments could be applied against separation of students with disabilities from their peers without disabilities in public education. Segregation would never lead to equality and by the early 1970s, the courts began to rule on challenges to the segregation of students with disabilities.<sup>6</sup>

In *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania*, the district court found that all children have the ability to learn, regardless of having a disability, and cannot be denied a free and appropriate public education.<sup>7</sup> The next landmark decision was *Mills v. District of Columbia Board of Education*,<sup>8</sup> which applied the same reasoning from *PARC* to the federally run school system in the District of Columbia. Both of these decisions resulted in settlement agreements, in which the parties agreed to provide education on an equal basis for all

children, including children with disabilities. Furthermore, the states had to agree that before any kind of different treatment was given to a student with a disability, a set of procedural safeguards had to be followed to protect against the stigmatization of differential treatment.

### **The Individuals with Disabilities Education Act**

The momentum that was gained from the *PARC* and *Mills* decisions was critical to the movement advocating for increased educational rights for students with disabilities. Congress recognized that it needed to respond more effectively to the call by parents and advocates for inclusion of children with disabilities into the free education system available to their peers without disabilities. In response to the *PARC* and *Mills* decisions, Congress enacted the Education for All Handicapped Children's Act (EAHCA) in 1975. The legislation has been modified since its inception, including a change of name in 1990 to the Individuals with Disabilities Education Act (IDEA) in an effort to recognize the importance of "people first language."<sup>9</sup> IDEA was revised and reauthorized in 1997 and again in 2004.<sup>10</sup>

From its inception, EAHCA/IDEA has been based on the premise that all children are educable.<sup>11</sup> This was in stark contrast to the assumptions that had been in effect before the *PARC* and *Mills* decisions. Congress recognized that IDEA would place additional financial burdens on the state because of the specialized nature of special education and the need to develop programs that met individual needs. Additional funding was made available to the states through the Department of Education on the condition that each state agency for education would submit a state plan showing that it was in compliance with the new law.<sup>12</sup> Compliance with IDEA (like EAHCA before it) requires that the states guarantee that children with disabilities will receive a free, appropriate education in the least restrictive setting, and that they will receive an individualized education program and procedural protections designed to safeguard the rights



of each student.<sup>13</sup> Each component presents a specific set of burdens on the states and a source of protection for students with disabilities. At the same time, the requirements of IDEA have been confusing for parents and advocates seeking protections under the law, and for school districts struggling with remaining complaints. The discussion below gives an overview of each component required for compliance with IDEA.

## **1. Children with Disabilities**

IDEA applies to children between the ages of three and eighteen (or to the maximum age of twenty-one depending on state law), who have been evaluated to be eligible in one or more categories and thereby can receive special education services. The statute defines a child with a disability as 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 title [20 USCS §§ 1400 et seq.] as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities;<sup>14</sup>

The principle that all children could benefit from an education, even if they acquired a severe disability, was an assumption at the heart of EAHCA/IDEA, but a new concept in the 1970s. Yet this concept was not significantly challenged until *Timothy v. Rochester School District* was decided in 1989, when a district court held that a child who had a severe cognitive disability would not benefit from any form of educational services and was therefore properly denied EAHCA protections.<sup>15</sup> The First Circuit Court of Appeals overruled the lower court finding that,

The language of the Act could not be more unequivocal. The statute is permeated with the words "*all* handicapped children" whenever it refers to the target population. It never speaks of any exceptions for severely handicapped children. Indeed, as indicated *supra*, the Act gives priority to the most severely handicapped...the Act speaks of the *state's* responsibility to design a special

education and related services program that will meet the unique "needs" of all handicapped children.<sup>16</sup>

Thus, the extent of the disability is irrelevant to the main goal of the statute.

## **2. Appropriate Education**

Under IDEA, an appropriate education does not impose a burden on the states to ensure that their educational departments provide the best programs available. At the same time, the decision in *Mills v. Board of Education*<sup>17</sup> made it clear that insufficient funds to finance the services and programs for children with disabilities could not be used to justify the inequitable distribution of funds so students with disabilities were denied appropriate educational programming.<sup>18</sup> The decision called for the equitable distribution of resources so that no child would be excluded from a public education consistent with his, or her, needs. This priority is reflected in the IDEA understanding that an appropriate education will be more likely where there is an equitable distribution of funds in an effort to meet the needs of all students. This was clarified in 1982 when the U.S. Supreme Court held in *Board of Education v. Rowley*,<sup>19</sup> that, at a minimum, the law required access to “specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.”<sup>20</sup> *Rowley* stated that the “Act requires participating States to educate handicapped children with nonhandicapped children whenever possible.”<sup>21</sup> In resolving the discrepancies that have arisen, the courts look carefully at the setting of the educational program to determine whether the program is in compliance with the statute. The hierarchy, in which a setting is classified as either restrictive or non-restrictive, also affects costs because the most restrictive settings are also usually the most costly to the state.

## **3. Least Restrictive Setting**

A fundamental principle of IDEA is that children with disabilities should be educated alongside children without disabilities. The statute defines a least restrictive environment in the following manner,

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>22</sup>

Educational programs are regarded as being in the least restrictive setting when they occur in the regular classroom. As additional services are added, they become progressively more restrictive in classification so that a student who received part-time special classes and part-time regular classes would be in a more restrictive setting than a child who took all of his, or her, classes in a regular classroom and received specialist consultation. Increasingly, restrictive settings include special day school, special residential school, with the most restrictive setting being a hospital. The underlying expectation in IDEA is that if a student requires a more restrictive setting for any reason, there will be a concerted effort to return the child to a less restrictive setting as soon as possible.<sup>23</sup>

Funding for each state is contingent on evidence showing adequate programming in compliance with the least restrictive environment requirement. States must grapple with the practicalities of implementing the least restrictive setting requirement. Several points of conflict have arisen over the years. One issue is the distance a child must travel to school in order to receive an appropriate educational program. Education agencies understandably try to reduce costs by distributing the number of special programs so as to avoid implementing them at each and every school. The issue of travel can severely limit the educational experience and place an

additional level of stress on a child with a disability. School districts also commonly try to regulate the age groups of the special education programs so that students who have disabilities are in classes with their peers as much as possible. This also presents cost ramifications for educational agencies that must plan class sizes and the availability of special education teachers and support staff.

Cost considerations become even more important when the child needs to be placed in a residential school, which is a very restrictive environment and very costly for the state. In *Hall v. Shawnee Mission School District*,<sup>24</sup> the parents of a child with a disability were denied reimbursement for moving him into a residential program after they made their own assessment that his needs were not being met in a day program, which they argued resulted in his poor behavior in the home. The court found that because of IDEA's mandate to have programs in the least restrictive setting, the option that the parents chose for the child was most likely too restrictive for the school district to agree with, and the parents were denied reimbursement for the cost of the residential program.

#### **4. Individualized Education Program**

The Individualized Education Program (IEP) is arguably the most powerful tool in IDEA. The IEP requires the participation of the parents, at least one teacher, a member of the school district, a person who can translate the evaluation into an instructional plan, others who have knowledge of the child (at the discretion of the parents and the school officials) and, when possible, the child with the disability.<sup>25</sup>

The IEP contains a high level of specificity regarding the current academic level the child has attained, the age of the child, a description of the disability and how it affects participation in the educational programs, as well as the frequency, location, and goals of the special education

programs that are being provided. At the ages of fourteen and sixteen, and one year before eligibility expires because of age (eighteen in some states and twenty-one in others), the necessary upcoming transitions for the child are assessed as part of the IEP.<sup>26</sup> At the heart of these requirements is that the focus be on the child as an individual. The inclusive nature of the IEP process is the first step in bringing the parents and school representatives together to craft a program for the child that is amenable to everyone. However, like other areas of IDEA, the IEP requirement has been extensively litigated.

Two cases illustrate the priority the courts place on the IEP. In *Thornock by Baugh v. Boise* the court called the IEP “the decision-making document” and held that the IEP was inadequate when it failed to comply with the detailed requirements of the statute.<sup>27</sup> In *Cleveland Heights-University Heights City School District v. Boss*, the court held that the school district violated the law when the student’s reading disability was not properly diagnosed in a timely fashion and that the IEP was inadequate once the disability became apparent.<sup>28</sup> The court distinguished between minor technical violations which would be excusable and those that destroyed the purpose of the statute. The court held that “the violation was far from technical, and its absence was not harmless. The omission went to the heart of the substance of the plan.”<sup>29</sup> When a parent or a school district wishes to modify an aspect of the IEP and the other side disagrees, IDEA has a set of procedural processes designed to protect the well-being of the child, promote constructive problem-solving between the parties, and, where possible, avoid the costs and delays of litigating the matter through the courts.

## **5. Procedural Protections**

Once a child comes within the protections of IDEA, a number of procedural safeguards must be followed before changes to the child’s IEP and placement can occur. For the most part,

the due process requirements in IDEA echo the language in the *Mills* decision, which set the floor for procedural safeguards the states would be required to adopt.<sup>30</sup> The funding of state programs is tied to the proper implementation of procedural safeguards in compliance with the statute.

The statute provides that the parents of a child with a disability should be kept fully informed of the records, meetings, and decisions involving the child and that they have the right to seek an independent evaluation of the child if they are unhappy with the assessment by the school district.<sup>31</sup> Other types of procedural protections required of the states include the right to seek mediation, the protection of the rights of the child when the parents cannot be located or in cases where the child is a ward of the state, and the development of a clear complaints process for parents to follow.<sup>32</sup>

It is clear that in most cases the courts have required that the complaining party must exhaust all administrative remedies before bringing an action in court, except where the violation is so blatant that following administrative remedies would be ineffectual. In *Kerr Center Parents Assoc. v. Charles*,<sup>33</sup> the court held that because the state agency had denied the parents an administrative due process hearing, their only available remedy was to file an action in court.

### **The Rehabilitation Act**

Prior to the enactment of EAHCA/IDEA, the Rehabilitation Act of 1973 was the law being followed by public entities. The Rehabilitation Act was a series of amendments made to an older law, in which the primary goal had been to rehabilitate World War I veterans who had returned home with a disability and required retraining in order to find employment.<sup>34</sup> However, the new amendments would have a significant impact on disability education rights through the application of Section 504 of the Rehabilitation Act, which prohibits recipients of federal funds

from discriminating on the basis of disability. Because most schools receive some form of financial assistance from the federal government, this swept them within the reach of the statute.

Early interpretations of the Rehabilitation Act by the federal courts appeared to carve out an exception to the “federal funds” requirement, so that if an institute of higher learning received federal funds for only some programs, those that did not receive federal funding could not be subjected to the requirements of the Rehabilitation Act. However, in 1987 the Civil Rights Restoration Act was passed. The Civil Rights Restoration Act amended Section 504 of the Rehabilitation Act so that any institution receiving federal financial assistance to finance all or part of a program would find itself subject to the requirements of Section 504 of the Rehabilitation Act.<sup>35</sup>

Despite initial problems with implementation, the Rehabilitation Act provided much needed protections for students with disabilities. The Rehabilitation Act’s main impact was in the area of higher education in the 1980s, as students with disabilities were attending colleges and universities in greater numbers and these institutions were now required to comply with the law in order to continue to receive federal funding.

There have been various explanations for the increase in the number of students with disabilities attending college in the 1980s. The first explanation is that the children who had received the benefits of the first generation of disability rights and protection laws in the 1970s were now reaching college age, and they were accustomed to advocating for their needs. The second explanation is that there was an increasing awareness of disability in general. Legislation, landmark court cases, and news coverage were all increasing public debate about the issue of disability rights.<sup>36</sup>

### **The Americans with Disabilities Act (ADA)**

In 1990, the Americans with Disabilities Act (ADA) was signed. As a result, the laws designed to prevent discrimination against persons with disabilities became more unified and comprehensive under a single statute. The ADA served to strengthen the Rehabilitation Act of 1973 by extending the protections afforded to persons with disabilities by that statute to cover the private sector, as well as state and local governments.<sup>37</sup>

The ADA comprehensively prohibits discrimination on the basis of disability through five separate provisions. Two provisions have direct implications for the protection of education rights for persons with disabilities. Title II prohibits public universities and other locally run institutions of higher education that receive federal funds from discriminating against individuals with disabilities. Title III applies to private colleges and universities that fall within the sweep of the Rehabilitation Act because they provide public accommodations.

One of the most important aspects of the ADA that affects education rights is the requirement that “reasonable accommodations” should be made to facilitate the employment of persons with disabilities and for students with disabilities at all levels of education.<sup>38</sup>

Accommodations are required to be made at all points of contact with the institution, including recruitment, admission or hiring, evaluation, and termination. An example of the type of accommodation available under this requirement is the provision of transcripts and/or tapes of classroom sessions for students who require extra time to understand and assess the material because of their disability. Further examples include allowing extended time to complete exams, and providing readers, interpreters, and technology that allow a student to be functional and integrated in the classroom setting. Institutions are required to have their accommodation policy clearly written and accessible, and it must contain a clear complaints procedure for students with disabilities and employees to follow if their needs are not being met.



### **How the Three Statutes Work Together**

In 1984, the Supreme Court decided *Smith v. Robinson* and found that IDEA was intended by Congress to be the exclusive avenue of relief in cases involving education for school-age children with disabilities.<sup>39</sup> The ADA had not been enacted at the time of the *Smith* decision, but it can be expected that, like Section 504 of the Rehabilitation Act and the other federal statutes available to persons with disabilities to resolve issues of discrimination in the education setting, IDEA would still be held to be the primary statute for resolving the issue today. While there are some instances in which a child would not find an adequate remedy under IDEA, such as cases in which the disability presents a purely physical barrier and no special education or physical therapy is required, in these circumstances the remedies available under Section 504 of the Rehabilitation Act and/or the ADA may be appropriate.<sup>40</sup>

Unlike IDEA, Section 504 of the Rehabilitation Act and the ADA do not provide funds to implement the requirements of the law. By the same measure, the requirements under the Rehabilitation Act and the ADA do not impose a burden on the states comparable to that imposed by IDEA. The highly specific mandate by IDEA to provide individualized treatment to each child with a disability makes it a powerful statute for ensuring the rights of students with disabilities but also renders it an unwieldy tool for practitioners, complainants, defendants, and the courts alike.

In spite of the significant financial resources available to implement IDEA, and the power of the federal government to withhold funds from the states for non-compliance, the National Council on Disability (NCD) reported that, during the report's review period of IDEA (1978-1998), every state had, to various degrees, failed to comply with the law.<sup>41</sup> More than half failed in five of the seven key compliance criteria, which include general supervision of the state

agencies, appropriate transition services of students to the next level of education or vocational training, free appropriate public education, establishment of procedural safeguards and complaint mechanisms, and failure to ensure that children would be educated in the least restrictive environment.<sup>42</sup>

### **Government's Role in Ensuring Equal Access to Education**

In order to ensure children with disabilities are receiving a free, appropriate education in the least restrictive setting, the Department of Education has established various safeguards, including providing technical assistance, monitoring state compliance, and ensuring enforcement of IDEA, to assist in carrying out the statute.

Technical assistance is provided by the Department of Education in order to assist states, school districts, educators, and individuals with disabilities and their families regarding their rights and obligations under the law. Technical assistance may come in the form of advice by experts and the Department, assistance with developing methods of instruction, and identifying local school officials to provide support. Information regarding procedural safeguards must be disseminated to parents, and this same information must be available on the local school's website. The Department may also provide training for a parent training and information center.

The Department of Education has oversight of the states regarding IDEA and monitors each state to ensure compliance. The Department must review state plans, and each state must review its own performance plan every six months, with any changes being submitted to the Department. State plans include such items as identifying which children in the state are in need of services, determining eligibility criteria, and establishing funding mechanisms. States are also required to release the state performance report to the public, and submit an annual assessment to the Department.

The Department of Education has a number of mechanisms in place to assist in the enforcement of IDEA. The Department may, among other things, advise states of the technical assistance that is available to them, require states to prepare a plan in order to correct problems in administering program, or withhold or recover federal funding for education. The Department of Justice can bring a cause of action in the courts.

#### **IV. Conclusion**

Education is the starting point from which all other rights and protections are realized and reinforced. An important part of the legislative process is to hear testimony from people whose lives will be affected by the changes in the law and determine what the real needs are without imposing well-meaning measures that have little guaranteed effect. An equally important part of the legislative process is to reflect on the state of the current law, to define carefully its flaws and problems as well as its successes. Although the U.S. has enacted legislation to guarantee a child a free education appropriate to his or her needs, the problems that remain are with compliance, monitoring, and enforcement of those laws.

National and international legislation is a continuous exercise of revision that needs to reflect the overarching goals of the legislature and the plurality of needs those goals are designed to meet. We can move more quickly toward the goals of education for all in an inclusive environment and effective protection of rights and freedoms when we learn from the mistakes that have been made in the past and apply those lessons as consumers, advocates, and legislators to build upon each success.

#### **Acknowledgement**

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<sup>1</sup> Press release, Inclusion International website [www.inclusion-international.org](http://www.inclusion-international.org).

<sup>2</sup> The Standard Rules on the Equalization of Opportunities for Persons with Disabilities II. Target Areas for Equal Participation Rule 6. Education, <http://www.un.org/esa/socdev/enable/dissre00.htm>.

<sup>3</sup> Article 13 (1) International Covenant on Economic, Social, and Cultural Rights.

<sup>4</sup> 347 U.S. 483 (1954).

<sup>5</sup> LAURA F. ROTHSTEIN *DISABILITY LAW: CASES, MATERIALS, AND PROBLEMS* 471 Michie Butterworth, 1995.

<sup>6</sup> Robert L. Burgdorf “Perspectives on the Directive from U.S. Law: Disability Nondiscrimination Law as a Key Element of Human Rights Law.” April 2004.

<sup>7</sup> 334 F. Supp. 1257 (E.D. Pa. 1971).

<sup>8</sup> 348 F. Supp. 866 (D.D.C. 1972).

<sup>9</sup> Ed Halsell “Notes and Comments: Disabled School Children: Where are their advocates?” 23 J. Juv. L. 65 (2002/2003).

<sup>10</sup> For in depth analysis of the workings of the IDEA and an assessment of its effectiveness see, “Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind” NCD Report, January 25, 2000.

<sup>11</sup> ROTHSTEIN, *supra* note 5, at 7.

<sup>12</sup> *Id.* at 471.

<sup>13</sup> 20 USCS § 1400 et seq.

<sup>14</sup> § 1401.

<sup>15</sup> 875 F.2d 954 (1989).

<sup>16</sup> *Id.* at 960-961.

<sup>17</sup> 348 F. Supp. 866 (D.D.C., 1972).

<sup>18</sup> LAURA ROTHSTEIN, *DISABILITIES AND THE LAW* 109, West Group, 1997.

<sup>19</sup> 458 U.S. 176, 201 (1982).

<sup>20</sup> *Id.* at 201.

<sup>21</sup> 458 U.S. 176, 202 (1982).

<sup>22</sup> 20 USCS (a)(5)(A).

<sup>23</sup> ROTHSTEIN, *supra* note 18 at 102.

<sup>24</sup> 856 F. Supp. 1521 (1994).

<sup>25</sup> ROTHSTEIN, *supra* note 18 at 107.

<sup>26</sup> *Id.*

<sup>27</sup> 767 P.2d 1241, 1246 (Idaho 1988). For a full explanation of the requirements see 20 USCS § 1414(d).

<sup>28</sup> 144 F.3d 391 (6<sup>th</sup> Cir.) (1998).

<sup>29</sup> *Id.* at 399.

<sup>30</sup> 348 F. Supp. 866 (D.D.C. 1972). *See also* ROTHSTEIN, *supra* note 18 at 105.

<sup>31</sup> 20 USCS § 1415(b)(1).

<sup>32</sup> ROTHSTEIN, *supra* note 18 at 146.

<sup>33</sup> 897 F.2d 1463.

<sup>34</sup> ROTHSTEIN, *supra* note 5, at 8.

<sup>35</sup> *Id.* at 348.

<sup>36</sup> ROTHSTEIN, *supra* note 18 at 214.

<sup>37</sup> Ruth Colker “The Americans With Disabilities Act: The Death of Section 504” 35 U. Mich. J.L. Ref. 219 Fall, 2001/Winter, 2002.

<sup>38</sup> For further perspective on reasonable accommodation, see Robert L. Burgdorf “Perspectives on the Directive from U.S. Law: Disability Nondiscrimination Law as a Key Element of Human Rights Law” April 2004.

<sup>39</sup> 468 U.S. 992.

<sup>40</sup> ROTHSTEIN, *supra* note 18 at 214.

<sup>41</sup> Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind, NCD Report, January 25, 2000 [http://www.ncd.gov/newsroom/publications/2000/backtoschool\\_1.htm](http://www.ncd.gov/newsroom/publications/2000/backtoschool_1.htm)

<sup>42</sup> *Id.*