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FAPE, LRE, and Related Laws: Implications for Inclusion and Co-teaching

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FAPE, LRE, and Related Laws: Implications for Inclusion and Co-teaching

Abstract

Unfortunately, IDEA implementation is still a problem for many schools today (Hill, Martin, & Nelson-Head, 2011). What are the causes of this? Could it be because many teachers do not have knowledge of the law? More and more students with disabilities are being served in the general education program with their peers. This is a result of several federal laws enacted to ensure that students with special needs are educated in the least restrictive environment. Inclusion of students with disabilities in the general education curriculum is a way to make sure that students are taught in the least restrictive environment with their peers. As more students with special needs are placed in the general curriculum, general education teachers must have knowledge on the legal requirements of IDEA and how to ensure legal rights of students are not violated directly or indirectly. Schools districts and teacher preparation programs have a responsibility to make certain that all teachers are aware of legal issues and laws that protect students with disabilities. One way to ensure that teachers understand the law and can implement the law is to provide teachers with specific training on legal issues in special education. This article will critically review the literature involving the evolution of special education law and the complex nature of preparing teachers for today's classrooms. Specifically, we examine current research on best practices in inclusion, co-teaching, and teacher preparation.

Keywords

special education law, legislation, teacher preparation, beginning teachers

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Introduction

As more students with disabilities receive special education services in general education classrooms, all teachers, including beginning teachers, must have knowledge on the legal requirements of the Individuals with Disabilities Education Improvement Act (IDEIA) and how to ensure the legal rights of students are not violated directly or indirectly. There has been a significant positive change in education with each new piece of federal special education legislation which ultimately led to the principles of the settings where students with disabilities are to receive services. Schools districts and teacher preparation programs should make certain that all teachers understand how to comply with legal issues and laws that protect students with disabilities. This article discusses how critical court cases have shaped special education through legislation. Furthermore, we examine the current research in inclusion and co-teaching.

Brief History of Special Education Delivery Settings

Federal Law and Supporting Court Cases

In 1975, Congress passed Education of All Handicapped Children Act (EAHCA) also known as PL 94-142, which secured educational rights for persons with disabilities. After numerous amendments, PL 94-142 became known as the Individuals with Disabilities Education Act of 1990. Individuals with Disabilities Education Act of 1990 was reauthorized again in 1997 and 2004 as Individuals with Disabilities Education Improvement Act (IDEIA), but the purpose of IDEA remained, which was to: 1) provide a free appropriate public education (FAPE) designed to meet the needs of the individual student through special education and related services; 2) ensure the rights of parents and children with disabilities were protected; 3) help

States and schools provide education to students with disabilities with federal funding; and 4) evaluate and assure the effectiveness of efforts to education students with disabilities. The founding principles of EAHCA are reemphasized IDEIA (2004), which are: 1) IDEA guarantees a free appropriate public education; 2) IDEA requires an appropriate evaluation to receive services; 3) IDEA requires an individualized education plan (IEP) designed to meet the needs of the individual; 4) IDEA requires that parents participate in the special education process; 5) IDEA requires the procedural safeguards be in place; and 6) IDEA requires a student with a disability be provided FAPE in the least restrictive environment (LRE).

One of the founding principles of EAHCA is to provide access to students with disabilities through FAPE. Federal law defines FAPE as:

(18) The term 'free appropriate public education' means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5) (EAHCA, 1975).

States are required to provide access to education through FAPE through the development and implementation of an IEP determines the quality of that education. EAHCA (1975) defines an IEP as:

(19) The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped

children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

One purpose of an IEP is to develop goals and implement services that are based on the individual needs of students with disabilities (IDEIA, 2004). Another purpose of an IEP is to determine the LRE for each specific student, with a preference for including students in the general education setting (Gordon, 2006).

Students with disabilities receive FAPE as directed in their IEP in the least restrictive environment. The LRE focuses on the location/setting of where the IEP services will be implemented. What does least restrictive environment (LRE) mean? Least Restrictive Environment (LRE) is the requirement in federal law that students with disabilities receive their education, to the maximum extent appropriate, with nondisabled peers and that special education students are not removed from regular classes unless, even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. [20 United States Code (U.S.C.) Sec. 1412(a)(5)(A); 34 Code of Federal Regulations (C.F.R.) Sec. 300.114.]

What do the terms “mainstreaming,” “integration,” “full inclusion” and “reverse mainstreaming” mean? None of these terms appears or are defined in federal or state statutes.

They are terms that have been developed by educators to describe various ways of meeting the LRE requirements of special education law. As a result, different educational agencies—school districts, county offices or Special Education Local Planning Areas (SELPAs) —may have somewhat different definitions of these terms.

Several court cases were used to determine when services would be in the general education class and when it was necessary to use another placement based on decisions of cases such as *Board of Education v. Rowley* (1982), *Roncker v. Walter* (1983), and *Daniel R.R. v. State Board of Education* (1989). In the case of the *Board of Education v. Rowley*, the parents of a student who was deaf sued the Hendrick Hudson School District for not providing a sign language interpreter for their daughter while in the general classroom (*Board of Education v. Rowley*, 1982; Gordon, 2006). The school claimed that it had provided the student who was deaf with an interpreter for a period of 2 weeks, but the student did not need the interpreter's services during that time in the classroom. The parents requested an independent evaluation, but both the examiner and hearing officer concluded that the student did not need the interpreter. The parents sued the school district under the notion that the school failed to provide their child with FAPE. The court sided with the parents, concluding that even though the student did not need the interpreter at that time, because of the student's disability, she was academically disadvantaged and must have some educational gain in addition to social gain. This court case defined the proper procedures needed when determining appropriate placement and services for each individual child. It has also served as an important model in subsequent cases to determine if a student would benefit by placement in the general education classroom utilizing appropriate accommodations and modifications. This court case was important because it gave cause to including students with disabilities in the general education class room using proper supports, i.e.

accommodations that make the curriculum accessible and modifications which modify the curriculum so that students can perform similarly to peers without disabilities. Additionally, supports are put in place in an inclusive classroom to support students with disabilities when they are needed.

In the case of *Roncker v. Walter* (1983), a 9-year-old with an intellectual disability was sent to a facility where only students with disabilities attended. The parents appealed the school's decision because they believed the student had not been given the opportunity to attend school with his peers without disabilities and had been denied placement in the least restrictive environment (LRE) (*Roncker v. Walter*, 1983). The district court agreed with the school system's placement stating that the separate facility was the best placement (Gordon, 2006; *Roncker v. Walter*, 1983). In addition, the Sixth Circuit Court ruled that if the separate facility was more appropriate, then the court should decide what factors determined that this facility was more suitable than the general education classroom. The case was then returned to the district court to consider those issues. The Sixth Circuit Court determined if the placement was appropriate and transferable to general education classroom by reviewing the following: (a) which was most appropriate, general education classroom or special education classroom; (b) which services could be transferred from the restrictive classroom setting to the general education classroom; (c) would the student benefit from being in the general education classroom; (d) would the benefits of the regular classroom outweigh the services provided in the restrictive classroom; (e) would the student's behavior cause disruption in the general education classroom; and (f) what would be the cost to provide the services. These six factors were combined to coin the term the *Ronaker test*. Ultimately, the *Ronaker test* was used to determine if a student should be placed in the general education classroom.

In *Daniel R.R. v. State Board of Education* (1989), the court voided the Ronaker test and established a two-part test that other courts could utilize to determine if schools were complying with LRE (Gordon, 2006; Sanks, 2009). Daniel was a kindergarten student with Down syndrome who was initially placed in the general education classroom (*Daniel R.R. v. State Board of Education*, 1989; Gordon, 2006). He was moved to a special education classroom after his teacher explained that he was not mastering the skills even though she had modified her teaching methods. Daniel's parents sued the school district for not placing Daniel in the LRE. The court applied a two-part test, which asked the questions: (a) if accommodations were used, could education be successful in the general education classroom; and (b) if not, and there was a change of placement, was the student included in the regular classroom or activities with peers as much as possible. The court ruled that the student would benefit more from being in a special education classroom than a general education classroom after considering the factors. The court encouraged the school's decision-making process as long as it could show that it had complied as closely as possible with the IDEA requirement of the least restrictive environment.

Partly due to the aforementioned court cases as well as many additional factors, IDEA was reauthorized to include federal mandates based on several of the recommendations by the courts. These changes within the law provided schools with clear direction on how best to meet the needs of students with disabilities in their schools.

Special Education Legislation

Individuals With Disabilities Education Act. IDEA was reauthorized in 1997. The purpose of the 1997 amendment to IDEA was to ensure that students with disabilities were improving academically and prepared to enter society as productive, independent members of the community (IDEA, 1997). A major change to IDEA was the philosophy of including students

from self-contained classrooms in the general education curriculum, while also expecting them to achieve the same academic standards. This amendment also required students with disabilities to be included in the general curriculum and to take state-required assessments with the appropriate modifications and accommodations.

The second revision on IDEA occurred in 2004. With this reauthorization, it was renamed the Individuals with Disabilities Education Improvement Act (IDEIA). IDEIA mandated that FAPE be provided for students with disabilities ages 3 through 21 as directed by their IEP in the LRE (Gordon, 2006; IDEIA, 2004). Inclusion in the general education classroom is the first, least restrictive option to consider for a child, while special education classes and special education schools are examples of more restrictive environments (Gordon, 2006). One of the purposes of an IEP is to determine the LRE for each specific student, with a preference for inclusion (Gordon, 2006). The goal of special education is to develop and implement instruction that is based on the individual needs of students with disabilities (IDEA, 1997; IDEIA, 2004).

No Child Left Behind Act of 2001. In 1965, the Elementary and Secondary Education Act (ESEA) was enacted, providing states with grant support for the education of students with disabilities. ESEA was reauthorized in 2001 as the No Child Left Behind Act of 2001 (NCLB, 2002). The purpose of the NCLB (2002) was to increase accountability for student achievement (including students with disabilities), and it also required schools to make adequate yearly progress (AYP) (Gordon, 2006; Harvey, Yssel, Bauserman, & Merbler, 2010). Pulliam and Van Patten (2007) suggested that the primary focus of NCLB was to hold states and school districts accountable for student achievement. NCLB also required students to be taught by highly qualified teachers (Mainzer & Mainzer, 2008; Sanks, 2009). The emphasis on highly qualified

teachers was also reiterated in IDEIA (2004), which required special education teachers to be high qualified (IDEIA, 2004). To meet NCLB (2002) and reauthorization of IDEIA (2004), students with disabilities are to be taught in the least restrictive environment by highly qualified teachers (Conderman & Johnston-Rodriguez, 2009; Cook, Tankersley, & Landrum, 2009; Cooper, Kurtts, Baber, & Vallecorsa, 2008; DeSimone & Parmar, 2006; Friend, 2008; Idol, 2006; Kloo & Zigmond, 2008; Mainzer & Mainzer, 2008; Nichols, Dowdy, & Nichols, 2010; Rice, Drame, Owens, & Frattura, 2007).

In 2004, amendments were added to IDEA and with the purpose of enhancing alignment with NCLB (2002). New accountability was placed on students with disabilities; therefore, students with disabilities had the same achievement expectations as their peers (Gordon, 2006; IDEIA, 2004; Mainzer & Mainzer, 2008). Among the changes in IDEIA of 2004, Congress mandated that students with disabilities have access to a challenging general curriculum (Hardman & Dawson, 2008). With this alignment, the requirement for more students with disabilities to be placed in the general education classroom increased (Shoulders & Krei, 2016). More and more schools were implementing an inclusive classroom model within their schools due to this federal mandate.

Every Student Succeeds Act (2015). In December of 2015, the Every Student Succeeds Act (ESSA) replaced NCLB. ESSA's primary focus was to lessen the government constraints on federally required assessments and give more control to each state regarding how those assessments would be administered. Most importantly, the AYP requirement of NCLB, is no longer a requirement within ESSA (Franquiz & Ortiz, 2016). Additionally, ESSA has also removed the highly qualified teacher requirement (Sawchuk, 2016). ESSA only requires teachers, who teach in Title I schools, to fulfill their states' licensure policy (Sawchuk, 2016).

IDEA of 2004 still had the highly qualified teacher requirement, but ESSA included amendments to remove the highly qualified reference in IDEA (Gardner, 2017). While ESSA removed the highly qualified teacher requirement, many states still require teachers to be highly qualified. As alluded to before, schools use the inclusion model to ensure that students with disabilities are taught by highly qualified teachers and those teachers of record are usually general education teachers. Thus, the law forced schools into this model without considering the needs of students and if the inclusion classroom is actually the LRE for some students with unique, challenging needs.

Best Practices in Special Education Service Delivery:

Inclusion

How do schools meet the previously discussed federal mandates about highly qualified teachers and still provide FAPE? Most experts would say by the inclusion model (Friend, 2008; Gordon, 2006; Sanks, 2009; Shoulders & Krei, 2016). Inclusion is a service delivery model employed to fulfill the least restrictive environment requirement for students with disabilities who attend class in the general education classroom with peers (Sanks, 2009). In an inclusive classroom, a student is presumed to belong in the general education class that the student would attend if he or she did not have a disability and an IEP (specially designed instructional services are provided there) (Gordon, 2006). Inclusion restructures the way services are provided to students, so they are brought into the classroom instead of receiving services in a pull-out model. This model requires collaboration between the general and special education teachers (Friend, 2008). Inclusion into the general curriculum means providing the necessary supports and services in the general education classroom, but it does not mean doing away with special education instruction. Friend (2008) claimed that inclusion is the process of incorporating special education

and general education initiatives and tactics in order to obtain a cohesive educational system that includes all students as active, fully participating members of the school that views diversity as the norm and that provides a rigorous curriculum, effective teaching, and necessary supports.

Praisner (2003) noted that in the inclusive classroom, the general education teacher works willingly and consistently with the special education teacher to provide challenging curriculum to all students. Inclusion allows access for all students to learn. If students with disabilities are to have equal achievement on accountability tests then they must have access to the same curriculum as their peer, not just specially designed instruction (Hardman & Dawson, 2008). As a result, Hardman and Dawson (2008) noted that expectations of students with disabilities were frequently lowered because special education teachers lack content certification and do not have the same curriculum expectations when compared to general education teachers.

Co-teaching

Boudah, Deshler, Lenz, and Schumaker (2008) identified a trend in co-teaching towards more students with disabilities being instructed in the general classroom versus the resource classroom. To meet the instructional challenges an inclusive classroom can present (i.e. IEP modifications such as reading orally and oral testing, specially designed instruction), many schools are implementing co-teaching models in order to support all learners (Friend, 2008). Mainzer and Mainzer (2008) suggested co-teaching is one way to fulfill the highly qualified teacher and content requirement of IDEIA (2004), which required students with disabilities to be taught by highly qualified teachers in the LRE.

Friend (2008) suggested a variety of instructional arrangements available co-teaching: one teach, one observe, one teach, one assist, parallel teaching, team teaching, alternative teaching, and station teaching. Similarly, Cahill and Mitra (2008) identified four types of co-

teaching which were: lead and support, station teaching, parallel teaching, and alternative teaching. The dominant co-teaching roles were found to be one teacher instructing while the other teacher assisted, a practice not recommended by the literature (Scruggs, Mastropieri, & McDuffie, 2007). Station teaching, parallel teaching, and alternative teaching are the co-teaching models recommended to increase student success. Using these co-teaching models is one way to meet the needs of students with disabilities by maximizing their instructional supports in the general education classroom and meeting the LRE requirement.

Conclusion

Teaching, as a profession, has under prepared teachers in key areas of inclusion, co-teaching, and special education law. The responsibility to equip teaches to successfully educate students with disabilities in their LRE largely falls upon teacher preparation programs and school districts. The literature reviewed within this study has revealed several key issues that focus on access, quality, and delivery of services in special education. Every teacher should have knowledge of these topics, particularly the meaning and implementation of LRE, inclusion, and co-teaching. Teachers should possess a strong understanding of special education law and its evolution process.

References

- Board of Education v. Rowley, 458 U.S. 176 (2nd Circuit Court 1982).
- Boudah, D. J., Lenz, B. K., Schumaker, J. B., & Deshler, D. D. (2008). Teaching in the face of academic diversity: Unit planning and instruction by secondary teachers to enhance learning in inclusive classes. *Journal of Curriculum and Instruction*, 2(2), 74-91.
- Conderman, G., & Johnston-Rodriguez, S. (2009). Beginning teachers' views of their collaborative roles. *Preventing School Failure*, 53(4), 235-244.
- Cook, B. G., Tankersley, M., & Landrum, T. J. (2009). Determining evidence-based practices in special education. *Exceptional Children*, 75(3), 365-383.
- Daniel R.R. v. State Board of Education, 874 F. 2^d 1036 (5th Cir. 1989).
- Education of All Handicapped Children Act, Pub. L. No. 94-142 (1975).
- ESSA (2015). Every Student Succeeds Act of 2015, Pub. L. No. 114-95 § 114 Stat. 1177 (2015-2016).
- Fránquiz, M. E., & Ortiz, A. A. (2016). Co-editors' introduction: Every Student Succeeds Act—A policy shift. *Bilingual Research Journal*, 39(1), 1-3.
DOI: 10.1080/15235882.2016.1148996
- Friend, M. (2008). Coteaching: A simple solution that isn't simple after all. *Journal of Curriculum and Instruction*, 2(2), 9-19.
- Gardner, K. (2017). The Every Student Succeeds Act and the Individuals with Disabilities Education Act. Retrieved from <https://www.apta.org/FederalIssues/ESSA/>
- Gordon, S. (2006). Making sense of the inclusion debate under IDEA. *Brigham Young University Education & Law Journal*, 2006(1), 189-225.
- Hardman, M. L., & Dawson, S. (2008). The impact of federal public policy on curriculum and instruction for students with disabilities in the general education classroom. *Preventing School Failure*, 52(2), 5-11.
- Harvey, M., Yssel, N., Bauserman, A., & Merbler, J. (2010). Preservice teacher preparation for inclusion: An exploration of higher education teacher training institutions. *Remedial and Special Education*, 31(1), 24-33.
- Hill, D., Martin, D., Nelson-Head, C. (2011). Examination of case law (2007-2008) regarding students with Autism Spectrum Disorder and violations of the Individuals with Disabilities Education Act. *Preventing School Failure*, 55(4).

- Idol, L. (2006). Toward inclusion of special education students in general education: A program evaluation of eight schools. *Remedial and Special Education, 27*(2), 77-94.
- Individuals With Disabilities Education Act Amendments, Pub. L. No. 101-476, 20 U.S.C § 1400 *et seq.* (1990).
- Individuals With Disabilities Education Act Amendments, Pub. L. No. 105-17, 20 U. S. C. § 1400 *et seq.* (1997).
- Individuals With Disabilities Education Improvement Act, Pub. L. No. 108-446, 20 U. S. C. § 1400 *et seq.* (2004).
- Kloo, A., & Zigmond, N. (2008). Co-teaching revisited: Redrawing the blue print. *Preventing School Failure, 52*(2), 12-20.
- Least Restrictive Environment (LRE): 34 C.F.R. §§ 300.114- 300.120
- Mainzer, L. H., & Mainzer, R. W. (2008). Practices and tools for meeting needs of today's learner. *Journal of Curriculum and Instruction, 2*(2), 1-8.
- Nichols, J., Dowdy, A., & Nichols, C. (2010). Co-teaching: An educational promise for children with disabilities or a quick fix to meet the mandates of No Child Left Behind? *Education, 130*(4), 647-651.
- No Child Left Behind Act of 2001, Pub. L. No. 107-110 (2002).
- Praisner, C. L. (2003). Attitudes of elementary school principals toward the inclusion of students with disabilities. *Exceptional children, 69*(2), 135-145.
- Rice, N., Drame, E., Owens, L., & Frattura, E. M. (2007). Co-instructing at the secondary level. *Teaching Exceptional Children, 39*(6), 12-18.
- Roncker v. Walter, EHLR 555:381 (6th Circuit 1983).
- Sanks, C. A. (2009). *The relationship between principals' attitudes toward inclusion, their inclusive practices, and the AYP status of their schools and students with disabilities in reading/language arts and mathematics* (Doctoral dissertation). Available from ProQuest Dissertations and Theses database. (UMI No. 3374145)
- Sawchuk, S. (2016). ESSA loosens reins on teacher evaluations, qualifications. *Education Week, 35*(15), 14-15.
- Scruggs, T. E., Mastropieri, M. A., & McDuffie, K. A. (2007). Co-teaching in inclusive classrooms: A metasynthesis of qualitative research. *Exceptional Children, 73*(4), 392-416.

Shoulders, T. L., & Krei, M. S. (2016). Rural secondary educators' perceptions of their efficacy in the inclusive classroom. *Rural Special Education Quarterly*, 35(1), 23-30.

Whitaker, S. D. (2000). What do first-year special education teachers need? Implications for induction programs. *Teaching Exceptional Children*, 33(1), 28-36.