Introduction to The Legal Foundations of Special Education

Timothy was a 13-year-old with quadriplegia and severe mental retardation. He could hear and respond to words, music, and touching, but his school district in Rochester, New Hampshire, decided that he was not eligible for special education services because there was no indication that he would benefit from them. Basically, the school district thought he could not be educated, so there was no point in spending money on a program for him.

His parents and others disagreed, and a suit was filed on his behalf, alleging that his legal rights had been violated. In 1988, a U.S. District Court upheld the school district's decision. According to the court, federal law required school districts to determine first whether a child would benefit from special education; if the child would presumably show little or no benefit, no special education was necessary.

The next year, however, a federal appeals court reversed the decision (*Timothy W. v. Rochester, New Hampshire, School District*, 1989). Basing their decision on the 1975 Education for All Handicapped Children Act, the appeals court judges declared that all children with disabilities must receive an appropriate public education, regardless of the severity of the disabilities or the achievement level the children might be expected to attain. The judges sent the case back to the district court, demanding that the school district develop an individualized education program for Timothy.

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> The decision created a good deal of controversy. Some people celebrated the ruling that federal law really meant what it said: All children with disabilities have the right to a free, appropriate public education. Others, however—especially public school officials—worried about the financial burden on public schools and on taxpayers.

As the case of Timothy demonstrates, the courts and federal and state legislatures have become deeply involved in the process of special education since the early 1970s. Educators have been compelled to comply with an increasing number of court rulings and laws. In this process of change, the primary movers have been the parents of students with disabilities. Much of the legislation and most of the court rulings that have changed the practices of special education are a product of parents working to redress problems with the education their children were receiving. Parents have formed advocacy groups, acting on behalf of students with disabilities. For example, if a group of parents of children who are mentally retarded believe that their children are being excluded from school programs, the parents go to court to compel the schools to include the children. When many parents in many states start taking legal action on the same issue—such as the inclusion of children who are mentally retarded in public school classes—and when that action reflects a shift in public opinion, Congress may pass a law that addresses the parents' concerns. Over time, special education has undergone radical change as a result of such judicial and legislative actions.

Before 1975, when the Education for All Handicapped Children Act was passed, students with disabilities did not have the right to a free, appropriate public education. As a result, many students with severe disabilities were relegated to living at home with their parents, not attending school, and often not

being taken out of the house. Others were placed in institutions where they were treated in a custodial manner. Staff attended to their physical needs, but they received little or no education. Today all students, including those with disabilities, have the right to a free, appropriate public education in a setting that is as much like general education as possible.

The Law Continues to Change

It is important to recognize that the situation is dynamic. People talk about the law, but the law is always changing. Practices that were followed yesterday may be illegal today. Procedures that are required today may be replaced by others tomorrow. Laws, rules, and regulations change as society's social and economic priorities change. Still, despite the evolutionary nature of the process, at any specific time the laws, practices, and procedures that govern education are expected to reflect the broad principles of freedom and equality that society, through the U.S. Constitution, has agreed on. As we write this text—even as you read it—U.S. Congress, state legislatures, and the courts are shaping public policy in special education by making and interpreting laws that affect how students are treated in our schools.

The Equal Protection Clause

The fundamental principle that underlies both litigation and legislation about the rights of students who are exceptional is the **equal protection clause** of the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment specifies that:

> no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

> nor deny to any person within its jurisdiction the *equal protection* of the laws.

It was the civil rights movement that pushed the equal protection clause onto national and state agendas. As court decisions and laws addressed the rights of people of color and women, the movement gradually expanded to protect the rights of people with disabilities. Today, schools are held accountable for demonstrating that they have educated all students, including those with disabilities.