

CHAPTER

# 1

## *The Law and Special Education*

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## KEY TERMS

**due process:** Guarantees that the parents will be equal participants in the development of the IEP and there will be safeguards in the administration of the child's program.

**equal protection:** Guaranteed by the U.S. Constitution.

**free appropriate public education (FAPE):** All students can and will learn when given the opportunity to do so, which includes educational and related services.

**nondiscriminatory assessment:** The evaluation must be administered in the student's native language or other appropriate form of communication. The instruments used must be standardized for the purpose for which they are being used and must be administered by properly trained administrators.

**parental participation:** The parents are responsible for giving written permission for testing and evaluation, participating in the decision to place the child, participating in the development of the IEP, providing feedback during the triennial evaluation, and advocating for the child.

**least restrictive environment (LRE):** A range of placements, from self-contained to full inclusion, for delivery of special education and related services.

**individual education plan (IEP):** The educational plan designed to meet the individual needs of each student. The IEP is a legal document and is based on the data generated through assessment of the child by the child study team.

**individual transition plan (ITP):** Must be included in a student's IEP by the time he or she reaches age 16. The transition plan is developed around meeting the needs of the child once she or he leaves high school.

**individual family service plan (IFSP):** The IFSP is similar to an IEP, however, it is written for children from birth to 3 years of age and includes a stronger family component.

**prereferral:** Includes screening and interventions that are attempted before a full referral is made.

**referral:** A referral is completed only after a prereferral has been made and interventions have been attempted. The referral includes an extensive and comprehensive evaluation of the child's abilities, including achievement and intellectual functioning.

**response to intervention:** A technique that evaluates the child based on academically proven research strategies that are effective in the remediation process.

## Assessing Sandy: A Case Study

Sandy is a student who is 10 years old and in the fifth grade. She was referred for special education because of poor academic performance throughout her school years. Sandy is in your classroom and you have identified that she has problems processing information and paying attention to directions. You have attempted prereferral strategies in the classroom and she still exhibits difficulties. Sandy's mother has left you a message with questions regarding the evaluation process, including the paperwork and her legal rights. Sandy is also bilingual. Her mother has requested involvement of an interpreter or bilingual professional in Spanish.

What information do you provide Sandy's mother?

What other individuals should be involved in the discussion?

What are Sandy's rights?

You will be able to answer all of these questions after reading this chapter. You will also be able to identify what laws would benefit Sandy in the long run. You will have a better understanding of cases that have shaped the history of special education and service delivery. You will be able to understand the aspects of your legal responsibility to utilize assessments related to initial placement and continuous assessment linked to instruction, and you will be able to explain the rules governing assessment of students receiving special education services. You will understand the placement process and its continuum of services. You will learn about the IEP, ITP, and IFSP.

The Council for Exceptional Children (CEC), Content Standard 1, specifically addresses the use of legal and judicial systems that deal with special education ([http://www.cec.sped.org/ps/perf\\_bases\\_std/standards.html](http://www.cec.sped.org/ps/perf_bases_std/standards.html)). These standards are endorsed by the National Council for Accreditation of Teacher Education (NCATE) (<http://www.ncate.org>). Colleges and universities have been responsible for providing teacher-training courses that prepare candidates to work with students with disabilities while entitling them to a free, appropriate public education (FAPE).

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## HISTORY OF FEDERAL LEGISLATION

Since the 1970s, federal law has dictated the role special education takes with regard to students, their placement in classrooms, their individual needs, and their education. These laws have evolved and improved through the years to bring a clearer picture of how services in special education are delivered to students. Some of these laws have been taken to the courts, where interpretations of them abound (Birnbaum, 2006).

Since the passage of Public Law 94-142 (P.L. 94-142) in 1975, also known as the Education for All Handicapped Children Act (EAHCA), the federal government has outlined a series of steps that protect the rights of children with disabilities. It did not take a simple law, however, to motivate the Congress of the United States. Their actions were based on previous cases that involved the decisions of lower courts within local, state, and federal jurisdictions.

The civil rights of individuals with disabilities were not protected to this point. Those who advocated for people with disabilities sought relief through the court and sometimes fought a difficult battle. Some of the court decisions provided civil rights to persons with disabilities that had not previously existed and ensured these guarantees and promises. As the twentieth century progressed, more laws were passed that provided more legislation that favored persons with disabilities. Most of these laws, including P.L. 94-142, were based on previous court decisions that ruled in favor of individuals with disabilities. A few key court decisions are examined next.

*Brown v. Board of Education of Topeka, Kansas*, was ruled on by the U.S. Supreme Court in 1954. This law ended the “separate but equal” manner in which Caucasian children and African American children were treated. No longer could white children and black children be taught in different classrooms and schools. All children were given the right to attend the same school, and it was determined that African American children were being denied their constitutional rights under the Fourteenth Amendment to the U.S. Constitution. This landmark legislation overturned *Plessy v. Ferguson* 1896, which upheld that separate schools were permissible because they were seen as equal.

The *Brown v. Board of Education* ruling ended segregation in schools that had existed for years. The ruling had an impact on special education some twenty years later because it became the basis of court rulings that determined that students with disabilities were being taught in separate environments from their nondisabled peers.

This law was the basis for determining that similar discrimination occurred when it came to teaching children with disabilities.

In *Hobson v. Hansen* (1967), it was determined that African American children were being placed in lower educational tracks in the Washington, DC, public schools. While all students were placed in public schools, the problem was that students from lower socioeconomic status or from minority groups were being discriminated against. Most of the tests used were normed on white, middle-class children, which discriminated against other racial groups. Some students from minority groups were erroneously labeled and placed in segregated classrooms, such as those that provided services to children with special needs, particularly mental retardation.

This resulted in African American students being taught a curriculum that was significantly different than the one being taught to other students. The court ruled that this was discriminatory and that it forced students to receive an inferior education. It was determined that the practices of using standardized tests that were normed on only one population must cease and that compensatory education must be provided.

The Pennsylvania Association for Retarded Children (PARC) sued the Commonwealth of Pennsylvania in 1972. This case, *PARC v. Commonwealth of Pennsylvania*, became one of the more important ones dealing with provision of services in special education. The suit was brought by a group of parents with children with mental retardation who felt that their children were being taught in separate schools because of their disability. This case was based on due process and equal protection as guaranteed by the U.S. Constitution.

The ruling determined that the schools could not serve children with mental retardation by segregating them from the public schools. Those students who resided in Pennsylvania were given the right to attend public schools and interact with their peers who were nondisabled. This was considered a landmark decision because it stopped segregation of children with disabilities. It became the foundation for the least restrictive environment (LRE) portion of the law.

The next case, *Mills v. Board of Education of the District of Columbia* (1972), was a class action suit that stated that the plaintiffs (children with behavioral disorders, hyperactivity, emotional problems, and mental retardation) had been suspended, transferred, expelled, and reassigned without due process. They were denied an equal opportunity to a free and appropriate public education. The decision of the court reinforced the rights of the children with disabilities to a free and appropriate public education (FAPE).

In *Diana v. Board of Education*, the courts ruled again about standardized tests. This case, which took place in 1970, was filed on behalf of nine Mexican American students. These students were placed in classrooms for special education in California based on the administration of intelligence tests in English that were once again normed on a white population, with items that were considered culturally biased. The court stated that students should be compared to their peers rather than to nonminority groups of children. This case ensured that nonbiased testing was considered for all children.

*Larry P. v. Riles* was a case that was similar to *Diana v. Board of Education*, with the only difference being that the plaintiff was African American. The case determined that the assessments used were biased and that the educational placement was discriminatory, because in both situations, IQ tests were used as the basis of ability. The issue in this case was that the tests had not been standardized on an appropriate population that included minority students. Because of the testing, a significantly large population of minority students was placed in classes for special education. The ruling also addressed the issue that no students, particularly minorities, could be placed in classes

for students with disabilities until nonbiased tests were developed and administered. States were forced to retest all students in programs assigned for children with exceptional needs and to provide them with compensatory education.

Advocacy groups continued to pursue legislation that would provide due process and civil rights to children with disabilities. Congress was impressed with the amount of advocacy on behalf of persons with disabilities and by the number of laws passed to support these individuals. This motivated the U.S. Congress to pursue federal legislation that would forever change the way people with disabilities were treated.

### **SECTION 504**

The Rehabilitation Act of 1973 was considered the first law to guarantee civil rights to persons with disabilities. This law, known as Section 504, stated:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity receiving federal assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. (29 U.S.C. § 794).

This law clearly made it mandatory that federal programs could not discriminate against persons with disabilities, and it extended the rights previously granted to minorities. This act does not promise funding for persons with disabilities, but it does afford rights previously not granted to a segment of society. The act allows individuals to file a complaint with the U.S. Department of Education (DOE) if discrimination occurs. The DOE can investigate and determine whether discrimination against a child with a disability has taken place. If it is so determined, the DOE has the power, with judicial oversight, to terminate federal funds to the school in question. It has done so in the past. A person with a disability may also sue school districts directly and, as the claimant, can collect damages and attorney's fees if his or her case is successful.

#### **Breakpoint Practice**

1. How did Section 504 come about?
2. What are the requirements of Section 504?
3. How do these laws affect you in the classroom?

### **P.L. 94-142**

Public Law 94-142, the Education of All Handicapped Children Act of 1975 (EAHCA), was the major law Congress passed that provided equal rights for children with disabilities and protected them under the Fourteenth Amendment of the U.S. Constitution. This law is required reading for anyone in special education and has a great deal to do with educating persons with disabilities (Crowell, 1989). Everyone who deals with children in special education has to understand not only the spirit of the law, but its content as well. A working knowledge and practical application of the law must be understood as a basis for understanding special education law. Those laws that followed or superseded P.L. 94-142 are based on the premise of it.

P.L. 94-142 was a basic bill of rights for children with disabilities that included federal funding for the increased financial responsibilities placed on the states to educate these children (Murdick, Gartin, & Crabtree, 2002). The basic premise of the law was



to (a) provide a free appropriate public education (FAPE) to students with disabilities in the public schools while providing necessary related services that these children would need, (b) protect children with disabilities and their parents from discrimination, (c) help the state education agencies (SEAs) and local education agencies (LEAs) grant a free appropriate public education to students with disabilities, and (d) evaluate and guarantee the efficacy of educating these students.

This act was developed for the purpose of providing educational services to a group of students otherwise excluded from the public schools (Murdick et al., 2002). According to the law, students must first demonstrate that they have mental retardation, visual impairments, auditory impairments, learning disabilities, behavior or emotional disorders, orthopedic impairments, traumatic brain injury, autism, deaf-blindness, or multiple handicaps. Second, students must demonstrate that because of these impairments, they have unique needs for special services to be able to benefit from their educational experiences [34 C.F.R. § 300.7(a)(1)]. The law covered children between the ages of 3 and 21. Those students between the ages of 3 and 5 may receive special services if they are experiencing developmental delays in certain areas. The law has eight parts that are important to understand when working with children with special needs.

The first part, zero reject, implies that all children, regardless of the severity of the disability, are provided services for a free and appropriate public education (FAPE). This part of the law assumes that all students can and will learn when given the opportunity to do so. This is known in the law as a free, appropriate public education (FAPE), which includes educational and related services. Among related services, physical therapy, occupational therapy, and speech therapy are included.

These services are to be provided at the expense of the public and free of charge to the parent and student. It is also important that the SEA include services in preschool, elementary school, and high school. These services are to be provided in conjunction with an individual education plan (IEP) that meets the individual needs of the child.

Nondiscriminatory assessment is the second part of P.L. 94-142. Once children with special needs are placed in the public school, they are to be appropriately evaluated and assessed. This is accomplished by designing and conducting a nondiscriminatory evaluation. The evaluation must be administered in the student's native language or other appropriate form of communication. The instruments used must be standardized for the purpose for which they are being used. Properly trained administrators must be utilized to administer such diagnostic tools. No single measurement or device may be used to determine whether a child is eligible for services (Murdick et al., 2002).

The evaluation must include a multidisciplinary approach where several professionals from various disciplines take part in the decision-making process. The parent is also to be included because she or he has expert status by review of the background knowledge she or he possesses about the child and his or her development. This parent is to be fully informed and to actively participate.

The third part, procedural due process, is one of the most important components of the law. Procedural due process guarantees that the parents will be equal participants in the development of the IEP and that there will be safeguards in the administration of the youngster's program. These safeguards include the protection of parents if they disagree with the decision of the school. Procedural due process also gives the parents the opportunity to refuse placement, as well as the right to refuse to make a written referral for evaluation, if they feel it is wrong. This refusal would then involve due process litigation, which brings in an impartial due process hearing officer to decide whether the school or parent has the best interest of the child in mind.

Parental participation, the fourth part of P.L. 94-142, guarantees that the parents are pivotal components of the multidisciplinary team (MDT). The parents are responsible

for giving written permission for testing and evaluation, actively participating in the decision to place the child in LRE, participating in the development of the IEP, providing feedback in the triennial evaluation (an evaluation that occurs every third year) to determine whether there is continued need for special education and related services, and advocating for the child. Parents may also participate at the state level by advocating for all children who are disabled (Murdick et al., 2002).

The fifth part, the least restrictive environment (LRE), states that the best placement for a child with disabilities is in the regular classroom: ideally, in the same classroom she would attend and in the same school she would attend if she did not have a disability. Within the continuum of services, ranging from self-contained classrooms to inclusion, students are to be placed where they will be most successful. The basic tenet of LRE allows for children with disabilities, including those in public and private schools or other care facilities, to be educated with children who are not disabled and that any placement outside the regular classroom occurs only when the nature or severity of the disability is such that the student cannot be taught in regular classes (34 C.F.R. § 300.500).

The IEP, the sixth part of P.L. 94-142, is essential to the provision of a free, appropriate public education of children with disabilities. An IEP is a legally binding document written for a child who is disabled; it is developed according to the requirements of the law. It is the means by which an appropriate educational program is developed for the child with exceptionalities. It also directs how the child will be taught and how services will be provided.

The IEP must include a statement of (1) the child's current level of educational performance; (2) annual goals, including short-term objectives; (3) specific special education and related services that will be provided; (4) the degree to which a child is able to participate in the general curriculum; (5) the dates for the beginning of services and the anticipated length the services will be in effect; and (6) appropriate objective criteria and evaluation procedures and schedules for determining how well the short-term objectives are being attained (Murdick et al., 2002).

A transition plan must also be included. Discussion involving school-to-adult transition issues begins by age 14. No later than age 16 and earlier if deemed appropriate, the student's IEP must contain a statement of the transition services needed before the child leaves school. The transition plan must also include a statement indicating that transition services may not be needed if it has been so determined.

The IEP is developed collaboratively between the school personnel and the parents. The document itself states that parental input is paramount in the process of its development. The IEP holds schools accountable to the parents for delivery of instruction to students with special needs.

There have been several reauthorizations and amendments to EAHCA. Public Law 99-457, the Education of the Handicapped Act Amendments of 1986, expanded the original legislation to cover children with disabilities between the ages of 3 and 5. Funding for early intervention programs for young children with exceptionalities was addressed. This law expanded Part B of EAHCA. Part B deals with procedural safeguards guaranteed to children and parents as well as the funds that regulate special education.

### **IDEA (P.L. 101-476)**

In 1990 the Individuals with Disabilities Education Act (IDEA), also known as P.L. 101-476, encouraged the use of "person first" language when describing disabilities. Part B was also amended so that services to children between the ages of 18 and

21 years could be described more properly. Transition services were more clearly defined and the role of assistive technology (AT) was added. Assistive technologies were included in the law so that students in need of such devices would be able to obtain them. Children with diagnostic categories of traumatic brain injury (TBI) and autism were also included as part of those considered disabled, thereby increasing the number of federally approved categories of disabilities by two.

In 1991, IDEA was reauthorized and was known as P.L. 102-119. The gist of these amendments was to reauthorize Part H, the section that deals with young children and funding for their services. Federal funds were allocated to help states educate infants, toddlers, preschoolers, children, and youth with disabilities (Murdick et al., 2002). Rather than require an IEP for children between birth and 3 years of age, an individual family service plan (IFSP) was required. The emphasis is on assisting the family to begin to understand the child and how the developmental delay/disability affects the family as well as the child. The process of early intervention is “family-focused” or “family-centered.” Professionals are to support the family in determining its needs and deciding how those needs can best be met. The IFSP includes information about the child’s status, family information, outcomes, early intervention services, dates, duration of services, service coordinator(s), and transition information from Part H (Murdick et al., 2002).

P.L. 105-17, the IDEA Amendments of 1997, changed the basic structure of the antagonistic relationship between parents and schools (Gorn, 1997). The legislation protected the educational rights of students who were disabled but were violent or dangerous, while giving educators opportunities to remove such children from their current educational placement. This amendment also mandated that schools include students with exceptionalities in local, district, and statewide assessments. These amendments also required mediation as an option so that parents and schools would have an additional outlet for settling disputes that might otherwise be given due process.

P.L. 105-17 also changed the way schools receive federal funds. The amendments permit local districts to seek assistance when paying for assistive technology (AT), related services, and supplementary devices so that the cost is spread across different agencies. The districts had to pay for many of these services out of tax funds and received little, if any, relief from other sources.

Other laws support those provided under IDEA. P.L. 93-112, the Rehabilitation Act of 1973, and P.L. 101-336, the Americans with Disabilities Act (ADA) of 1990, provide antidiscrimination legislation at the federal level (Murdick et al., 2002). First and Curcio (1993) stated that the ADA was probably the most sweeping legislation since the passage of EAHCA in 1975 and that it provided a comprehensive national mandate that eliminated discrimination against individuals with disabilities.

Yell (1998) defines the different parts of the laws that govern special education and provides a historical perspective of how these laws came to be. For many years, children with disabilities were excluded from schools and received little or no services. It took many years for the legislation to come about, so there are many stories of abuse of children with disabilities in the years preceding the enactment of the current legislation.

For example, in the 1800s, students with disabilities were excluded from schools under court order. In 1893, the Massachusetts Supreme Judicial Court ruled that a child who was “weak in mind” could be expelled from public school (Yell, 1998; *Watson v. City of Cambridge*, 1893). Similar cases occurred through the early 1900s, and these cases, when challenged, were upheld by the courts. In one situation in 1919, a student was removed from school because he had a disability, even though he had attended school through the fifth grade (Yell, 1998).



### NO CHILD LEFT BEHIND (NCLB)

The purpose of NCLB is to ensure that all students, including those with disabilities, are included in the monitoring process in order to provide appropriate instruction. The law is tied into standards-based assessment and instruction. Each state must monitor the schools for compliance, which translates into accountability issues at all levels, including the teachers and the schools (see Chapter 8 for more discussion). This law has caused the reshaping and rethinking of the educational school system paradigm.

#### Breakpoint Practice

1. How is IDEA 2004 different from P.L. 94-142?
2. How has NCLB affected the schools?
3. Why are IEPs, ITPs, and IFSPs such important documents?

### PARENTAL ADVOCACY

Parental advocacy remains an important component of legal decisions affecting children and persons with disabilities. Parents began to form groups to discuss what they could do about the exclusion of their children from public schools and how they could best address their concerns. Yell (1998) states that the first such group formed in Ohio in 1933. The group, known as the Cuyahoga County Ohio Council for the Retarded Child consisted of five mothers who got together to protest the deplorable treatment their children received in being excluded from school. This protest helped to create a special classroom for these children, backed by the parents themselves. Without such past advocacy, the services provided to children with disabilities today would be a great deal less effective (Yell, 1998).

The parental advocacy movement was a large part of why the U.S. Congress enacted laws that supported children with disabilities. The parents were part of the process of writing the laws and advising Congress in making their decisions concerning the rights of persons with disabilities. While many think that the laws strongly favor the children, without these laws persons with disabilities would still be excluded from schools and the greater society.

Several organizations, such as the Council for Exceptional Children (CEC) (<http://www.cec.sped.org>), have spoken for persons with disabilities. Today, the CEC takes political stands on issues concerning disabilities. Through legal action, these organizations ensure that the rights of persons with disabilities are not infringed upon and that these individuals are treated equally and with respect.

**Table 1.1** Legislation Concerning Special Education

1954	<i>Brown v. Board of Education</i>
1972	<i>PARC v. Commonwealth of Pennsylvania</i>
1973	Section 504 of the Rehabilitation Act of 1973
1974	P.L. 93-380, Education Amendments of 1974
1975	P.L. 94-142, Education for All Handicapped Children Act
1986	P.L. 99-457, Education of the Handicapped Amendments
1990	P.L. 101-476, IDEA
1990	P.L. 101-336, ADA
1997	P.L. 105-17, IDEA Amendments
2004	Reauthorization of IDEA

**Breakpoint Practice**

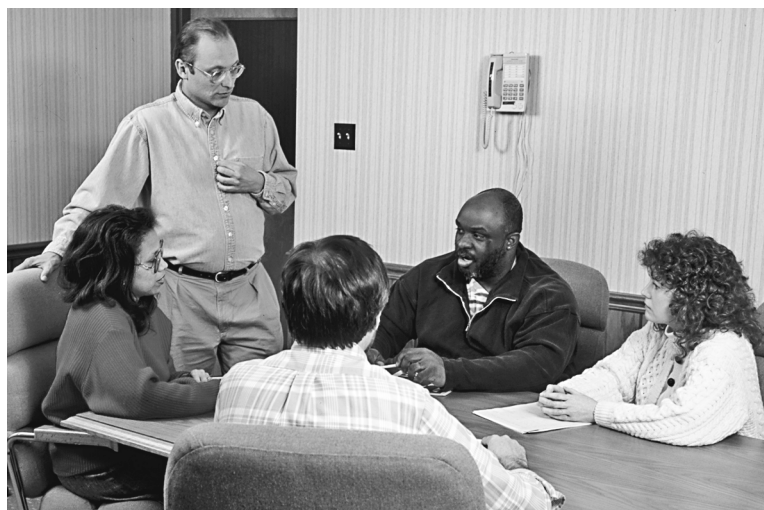
1. What are some of the important issues involving parental advocacy?
2. How are professional organizations connected to parental advocacy?
3. To which organizations in your area would you refer parents for advocacy issues?

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**ASSESSMENT AND THE LAW**

Assessment serves many purposes. It is used for screening, placement, and evaluation of student progress. It is a cyclical process in special education because it never ends. A student is initially tested or assessed to determine whether he or she is eligible for services in special education when parents submit a written request for evaluation. When eligibility has been determined (the student has a disability and needs special education and/or related services), an IEP is collaboratively written and followed. The teacher frequently checks the student's progress against the IEP and reports data to the student and the parents, making changes as needed. If the student is not making progress on the IEP, the Multidisciplinary committee (MDC) schedules another meeting, reviews the most current data, and makes whatever modifications are required in order for the child to be more successful. Assessment is used to determine whether a child is eligible for special education. The team determines whether a disability exists and to what extent the disability is interfering with the child's school progress.

While standardized tests are used for the purpose of special education assessment, children have often been misdiagnosed because of language differences or cultural factors. Testing can be harmful if it is not administered by a trained professional and includes any aspects that discriminate against students. The test administrator must be highly skilled in administering, interpreting, and scoring the tests so that no errors in diagnosis are made. Too many students are still misdiagnosed or placed in programs that are inappropriate for meeting their needs.



Scott Cunningham/Merrill

## PREREFERRAL

Screening is a process that usually helps to filter out any gross problem areas. Most students have a vision and hearing screening completed before a full assessment of tests is ordered. It helps to establish whether a potential difficulty exists. The vision and hearing screening is usually completed by the school nurse or the nursing assistant; however, it checks only acuity aspects, and these screenings are not highly reliable. Children may pass these because they are based on acuity elements and are assessed with limited training. Yet difficulties exist and require more in-depth investigation. A speech screening is completed by a speech therapist, while a health screening is conducted by the school nurse or assistant.

Screening instruments for specific disabilities are relatively inexpensive to purchase and use. For example, screening checklists for attention-deficit hyperactivity disorder (ADHD) are available in bulk. The parent and the teacher each complete ratings on their forms; one and a member of the MDC, usually the psychologist, determines if further assessment is needed. The same holds true for gathering initial evidence on the possible diagnoses of autism, learning disabilities, mental retardation, and behavior disorders. Some schools create their own screening instruments that are used to gather specific data before a formal recommendation for assessment may occur.

Podemski, Marshall, Smith, and Price (1995) state that teacher-made tests, checklists, rating devices, interviews, inventories, record reviews, socioeconomic ratings, anecdotal records, and observations are also some examples of some good screening instruments. The screening device must be dependable and meet federal and state requirements. The goal is to use as few screening instruments as possible.

In some instances, analysis and follow-up on the results of these devices may be all that is needed to determine whether a disability exists. For example, a child may be having trouble in the classroom, and a vision screening determines that the child has problems seeing. A simple referral to an optometrist or vision specialist may solve the problem. Glasses or prescription lenses may allow the student to function successfully. The same holds true for the hearing screening. A referral to an audiologist may be all that is required. Removal of ear wax or reduction of fluid in the middle ear may help improve the child's performance.

Screening does not provide enough information to qualify or determine eligibility for special services. The law states that a full assessment must be completed for this purpose. Placement is contingent on assessment results, as is the IEP. All are parts of the due process system that is in place under IDEA. Collaboration efforts of parents and members of the MDC construct the assessment process.

It is the responsibility of several qualified test administrators to administer the assessments that are needed to determine whether the child is eligible for special education services. Different instruments are used to determine eligibility. Some are formal; some are informal. The use of assessment is not a direct science because it does not always deal with specific symptoms of a disability.

## REFERRAL

It is sometimes difficult to assess that a disability exists because no test can accurately measure symptoms or characteristics. In medicine, a physician can sometimes view the problems that exist and pinpoint their causes. It is not so easy in special education. Different disabilities may have the same characteristics, and it is easier to misdiagnose a problem. For example, a student may be acting out in class and the resulting assessment concludes the student has a learning disability. This diagnosis is made based on test scores and may overlook the behavior problem. The key is asking the right questions that lead the team to construct the best assessment plan to answer those questions accurately.

The definitions of the different disabilities in special education also vary. Intelligence is often used as a determining factor in placement, yet it is not always possible to measure intelligence in all children. With mental retardation, it is difficult to measure intelligence, especially if the student's disability is considered severe or profound. In the case of ADHD, the diagnosis is usually made on the basis of data completed from checklists from the teacher and the parent. The diagnosis is made by a child psychiatrist or pediatrician. The symptoms may not appear in the doctor's office and the physician has to rely on what the teachers and the parents say.

Assessment is not always accurate. The time of day or week when the instrument was administered can affect the results. The child may not perform as well first thing in the morning and may do better in afternoon testing sessions. The child may perform less well for unfamiliar staff in unfamiliar settings. Or the child may perform much better than typical daily performance. The tests do not always measure all characteristics of a child and may favor certain areas over others. In other words, a child's score may be inflated or deflated based on statistical regression found in the test (see Chapter 2).

Sometimes, students have medical conditions that may be overlooked during a school-based assessment. It is rare for a physician to administer tests to a child unless there is a concern about a medical condition. Emotional disturbances (ED) and mental retardation (MR) sometimes have underlying causes. Many students with MR may have digestive or seizure disorders that may go undetected because they are not serious enough to be detected during screening or testing in the school.

States set their own guidelines that concern specific disabilities (Podemski et al., 1995). They have the right to set the definitions for categories as long as they agree with the federal interpretations. Sometimes, these rules may vary greatly from state to state. The states may also determine what tests are going to be used to determine if a given disability exists.

### Breakpoint Practice

1. What is the process of prereferral?
2. What is the process of referral?

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## TYPES OF ASSESSMENTS

The types of assessment used depend on the suspected disability and the state guidelines that go along with it. This is why it is so critical that students, parents, and the MDC ask the right questions so that the assessment provides good data for good decisions. An ecological assessment is usually conducted with children who are suspected of having a behavior disorder or a learning disability. This type of assessment requires that the student be observed in the natural environment. Valuable information can be gathered from these types of assessments that cannot be gleaned from standardized tests (Podemski et al., 1995). The direct observation can be structured or nonstructured. It can include checklists, rating forms, and sociometric techniques, or it can be a lengthy running record transcript of all that occurs during the observation. The ecological assessment determines how the child fits into the environment and can include the observation of specific behaviors that are counted each time they occur. This helps measure how well the child functions in the environment and helps to determine what types of behavior problems may exist.

Podemski et al. (1995) discuss perceptual assessment that measures visual perception, perceptual-motor functioning, auditory perception, memory for information presented both verbally and visually, and motor function. Standardized tests are used for this purpose, as are checklists and rating scales that can be developed by the school. This type of assessment is usually utilized when it is suspected that the child has a learning disability.

Spoken-language assessments are used to determine whether a learning disability, mental retardation, speech disorders, or hearing disorders exist. Many of these assessments are standardized. Because language is important to learning, these assessments provide a wealth of information about the student's ability to use it both receptively and expressively in the process of learning.

When a learning disability is suspected, a written language assessment is also usually conducted. These are usually standardized tests, but very few effective ones are available. They usually are subjective in nature and do not always yield sufficient information about the written language process.

One purpose of assessing students is to determine educational functioning (Podemski et al., 1995). The test administrator tries to establish educational functioning by assessing subject areas, learning styles, and the strengths and weaknesses of the student. Social/emotional functioning is also assessed. A physical/sensory assessment is often conducted as well. Cognitive functioning, including intelligence tests, are also used widely for the purpose of determining functional levels. In the case of MR, adaptive behavior scales must be completed. A language assessment is also important because language is an important part of learning.

Certain personnel are in charge of assessing students with special needs. These individuals are either hired by or work for the district. The psychometrist is responsible for assessing IQ and personality profiles, the speech and language pathologist assesses speech and language, the school nurse screens for health issues and performs the vision and hearing screening, and the social worker does the home assessment. Teachers also collaborate on assessment practices. They provide informal assessment results from the classroom. Furthermore, some formal adaptive behavior and language skills are assessed by teachers. Each has an important role in the assessment of the individual with disabilities and is responsible for service provision in some instances.

The student with a potential disability is assessed using a variety of instruments (Podemski et al., 1995). These instruments cover intelligence, achievement, written expression, language, perceptual and sensory abilities, and behavior/personality. These tests are administered by a clinician who is an expert in the field of the assessment.

Norm-referenced tests, although controversial, are the most common type of assessment used in special education. They have objective scoring techniques, are standardized on a population throughout the country, and detail how well a child does compared to his or her peers. One of the drawbacks of this type of assessment is that it might test items that the student has not yet learned. These tests also compare children against those who may not receive special education services. The results provide only an overall assessment of the child's abilities and do not pinpoint specific areas of strengths and weaknesses.

Criterion-referenced tests are based on a sequence of skills within a particular area of the curriculum (Podemski et al., 1995). Criterion-referenced tests are based on a criterion rather than a norm and evaluate the child's ability to accomplish certain tasks. They are limited because they measure only individual tasks that the child may or may not be able to complete. They also do not provide a standardized score or measure that provides specific data compared to how others in the student's peer range are doing.



Outcomes-based assessment or curriculum-based assessment is another type of testing used. These tests are based on the local curriculum and measure specific things the student should have learned, based on the curriculum. Areas where the student is weak can be identified and remediated. This information can be recorded and written into the IEP.

Portfolio assessment is another type of evaluation that can be used. Portfolios are becoming more and more popular for evaluating teachers as well as students. The portfolio contains the student's written artifacts that demonstrate how well the student is doing in a particular subject over time. This is a more authentic way to document proficiency in an area.

Testing can be harmful if it is misused or abused. The tests are quite expensive to use, and standardized tests are usually re-normed every five to ten years. The test administrator is responsible for using the most recent edition of the test and must keep current with the changes that appear in the revised editions. Some of these tests are not clinically sound, and great care must be taken in evaluating the results. Misdiagnosis is a potential problem that can lead to parental litigation and due process. That is one reason why it is so important for the individual administering the assessment to keep current in test administration.

As mentioned earlier, many diagnoses are made on the basis of norm-referenced tests that contain cultural and language biases. Even though the student must be tested in his or her native language, something in the translation may be lost, providing a biased result. Test administrators must be careful in interpreting any test results before labeling a child. Too many children are actually placed in special education because there appears to be no other reason for their failure. This does not serve the best interest of the student and can lead to future problems.

IDEA protects the parent and child more than it protects the school. If a misdiagnosis is made, problems can result in the child's failure to thrive. When this occurs, it leads to potential behavior problems and the potential for dropping out of school. The only one who loses is the student.

### Breakpoint Practice

1. What are some types of assessments?
2. What is the purpose of assessing students who are being evaluated for special education?
3. Who is responsible for the assessment of students in special education?

### Multicultural Considerations

Multicultural considerations and discriminatory practices have shaped the field of special education in relation to changes in the law. Cases have changed the rules regarding special education services. Specific aspects of assessment are addressed within these laws. Students should be tested in their native and primary language. The parents should also be informed of their rights and are provided interpretation of test results in their native language. This is only one consideration of the multicultural approach to the assessment process in special education.

*(continued)*

Cultural rules are provided in the laws so that students are given every opportunity to succeed. These considerations include bias-free testing and placement. This is another example of how the laws address the individual needs of students.

Researchers have supported the use of prereferral of students in need of special education services to reduce overidentification and underidentification of students who are culturally or linguistically diverse (Nelson, Smith, Taylor, Dodd, & Reavis, 1991). Important considerations during the prereferral process include carefully choosing the individuals on the prereferral team and addressing proactively differences in language that can affect communication and collaboration. Also, learning styles must be considered, as well as concepts of time (importance of being exactly on time) and cooperation (working in groups versus competition) during the process (Dodd, Nelson, & Spint, 1995).

Standardized tests are also flawed when evaluating students who are culturally and linguistically diverse. Many of these tests do not provide fair opportunities for the students who speak a language other than English. Using performance-based, curriculum-based, and dynamic assessment could increase the validity of the assessment process (Salend, Garrick, Duhaney, & Montgomery, 2002).

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## REASSESSING SANDY

Sandy's family should be informed of their rights in writing and in their native language. Sandy's mother should be informed about safeguards that will be used during the evaluation process. Furthermore, all participants in the evaluation of Sandy should be actively involved in the process. Participants include the psychologist, the social worker, occupational and speech therapists, as well as special education and inclusion teachers. Teachers should list prereferral strategies used in the classroom. More input should also be obtained from Sandy.

Sandy has the right to a free, appropriate public education in the least restrictive environment based on a nondiscriminatory assessment. The informal and formal assessment tools should be written in her native language. They should be administered by properly trained administrators, and the instruments should be standardized for the purpose for which they are being used. Any variation in the standardization procedures should be noted and described in the evaluation report. Her family members should have a voice in the decision-making process. She is entitled to due process and to protections under the law that will provide her an individualized education based on her needs.

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## ACTIVITIES

1. Identify three websites that deal with legal issues, parent rights, and self-advocacy in special education.
2. Create a visual display of special education law from *Brown v. Board of Education* through IDEA.
3. Name and describe three parental rights in relation to the evaluation process.
4. Name and describe three critical elements of nondiscriminatory assessment.

**WEB RESOURCES**

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<http://www.wrightslaw.com>  
<http://www.ed.gov/parents/needs/speced/edpicks.jhtml>  
<http://www.specialchild.com/legal/html>  
<http://www.nichcy.org>  
<http://www.abspedpac.org/specialeducationlaw.htm>  
<http://www.napas.org>  
<http://idea.ed.gov>  
<http://www.disabilityrights.org/glossary.htm>  
<http://www.edjj.org>  
<http://www.ncmhjj.com>

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