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Special Education Legal Assistance



The Air Force Embraces Special Education Legal Assistance as the Nation Celebrates Special Education Day

By Ms. Sharon J. Ackah

The Department of the Air Force recognizes the need to ensure that military service is not a barrier to our children's educational progress. This December 2nd, Special Education Day is met with invigorated resolve to combat the notion that our families' geographic mobility is an excuse to deny services to our children.

National Special Education Day

Eighteen months have passed since the Department of the Air Force focused on a mission to deliver proactive and competent legal support in education law to eligible Airmen, Guardians and families with special needs. In April 2021, the Department of the Air Force created the Exceptional Family Member Legal Assistance and Policy program, dedicated to providing legal assistance to exceptional family member (EFM) families in education law. Since its inception, the program has improved operational readiness by training over 2,000 legal professionals, conducting outreach to more than 7,500 exceptional family member stakeholders, and offering special education legal assistance to EFM families at Air Force and Space Force installations worldwide.

National Special Education Day is December 2nd. It is a day set aside to commemorate the nation's first federal special education law, the Individuals with Disabilities Education Act, which was signed by President Gerald Ford on December 2, 1975. The day presents an opportunity to offer well deserved recognition to special educators, advocates, and community organizations that support students with disabilities. It is also an apt time for reflection on the evolution of special education law as the Air Force continues to innovate and accelerate changes in its special education legal assistance capabilities.

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Inequalities in Educational Opportunities

The concept of inequalities in educational opportunities can be traced back as far as 1849 when the Massachusetts Supreme Court ruled that segregation was permissible within schools (*Roberts v. City of Boston*). More than 100 years followed before tireless efforts to desegregate schools would prove fruitful in the landmark supreme court case of *Brown vs. Board of Education* (1954). Although the gravamen of the complaint in *Brown* was segregation based on racial identity, the opinion paved the way for much broader legal and policy discourse on inequalities and expanded into the field of special education. Parents of children with disabilities began to sue educational agencies for discriminatory practices not based on ethnicity, but on disabilities. Leading disability cases capitalized on the *Brown* court's recognition of the detrimental emotional and societal impacts of separating children in schools based on their inherent qualities. Plaintiffs also relied heavily on due process rights and equal protection under the law as afforded by the 14th Amendment.

Both cases established that children with disabilities should have the same access to education as their neurotypical peers.

During the early 1970s, two cases served as catalyst for the introduction of federal special education laws. In *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (1971), parents sued the state of Pennsylvania for its exclusion of children with disabilities from state supported public schools. The case was a game-changing legal victory for disability rights as the court found it was unconstitutional to deny children access to a free public education, irrespective of their disability. In 1972, *Mills v. Board of Education of the District of Columbia* followed the *PARC* case. Both cases established that children with disabilities should have the same access to education as their neurotypical peers. The *Mills* case went further in framing the legislative action to follow, by also addressing the practice of suspending or expelling children with disabilities, absent due process proceedings.

Brown, *PARC*, and *Mills* all amounted to judicial recognition of the rights of disabled children under the 14th amendment, disapprobation of local laws denying children with disabilities access to public schools, and loud sanction of the rights of all children to free public education. The following words of the Justices in *Brown* may have been foretelling of the legislative action that would naturally follow:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship.^[1]

In 1972 Congress launched an investigation into the status of children with disabilities across the United States. Relying upon statistics from the Bureau of Education, Congress noted that less than half of the 8 million children needing special education services and accommodations were receiving services appropriate to their disabilities. Almost 2 million received no services at all. In 1975 Congress enacted the Education for all Handicapped Children's Act. The Act codified what was already set forth in judicial precedent which is that all children have a right to a free public education. It also provided a process for accountability for educational agencies and procedural safeguards for parents of children with disabilities.

As case law and legislation are often intertwined, the 1982 Supreme Court case of *Board of Education of the Hendrick Hudson School District v. Rowley* provided interpretation on what level of support public schools are required to provide under the Act. The court described the requirements of a Free and Appropriate Public Education (FAPE) as that which confers an "appropriate" educational benefit within the context of a child's disability, not necessarily what is "best" for the child.

Special Education

The Education for All Handicapped Children's Act has been amended and is now the 2004 Individuals with Disabilities Education Act (IDEA). IDEA's overarching purpose is to protect the rights of students with disabilities and their parents. States receiving federal IDEA funds are obligated to provide FAPE for each child with a disability. This includes special education and related services, tailored to meet the unique needs of each child with a disability and sufficient support services to permit the child to benefit from the instruction. The primary vehicle for providing each child with FAPE is the Individualized Education Program (IEP) which is a personalized plan to meet the child's educational needs. Sometimes parents and schools disagree on the provision of FAPE. IDEA established formal procedures for resolving disputes that may arise.

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Case law has continued to address various key aspects of special education, including related services, tuition reimbursement for private school placements, and most notably, the legal definition of a "meaningful educational benefit." When deciding if an IEP has been developed to confer a meaningful educational benefit, apply the standards of the 2017 *Andrew F. v. Douglas County School District* case. Are there challenging objectives? Is the progress expected of the child appropriate in light of the child's circumstances? Has the school offered compelling reasons for how the IEP services and support will help the child make progress? The courts have also offered a two-pronged test for determining whether a child's education is appropriate. First, whether the educational agency has followed the procedures set forth in IDEA and second, whether the IEP is reasonably calculated to enable the child to receive an educational benefit.

Conclusion

Military children will move an average of up to 9 times before they graduate high school. For approximately 35,000 children in the Department of Defense who have one or more disabilities, this transient lifestyle poses significant challenges to their education. The Department of the Air Force recognizes the need to ensure that military service is not a barrier to our children's educational progress. This December 2nd, Special Education Day is met with invigorated resolve to combat the notion that our families' geographic mobility is an excuse to deny services to our children. The Department of the Air Force's special education legal assistance capability helps military children receive FAPE while improving the overall readiness and resilience of the force. As stated by our Supreme Court Justices in *Brown*:

[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[2]

About the Author



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Glossary

- **EFM:** exceptional family member
- **FAPE:** Free and Appropriate Public Education
- **IDEA:** Individuals with Disabilities Education Act
- **IEP:** Individualized Education Program

Websites

- [Exceptional Family Member Program \(EFMP\)](#)
- Military One Source Website: [Exceptional Family Member](#)
- [The JAG Reporter](#)
- [DoD Instruction 1315.19](#), The Exceptional Family Member Program (EFMP)

Endnotes

- [1] Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).
[2] *Id.*