

## **Special Education Law: A Civil Right Not a Privilege**

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**00:00:02** Hello and welcome. My name is Crystal Devos Mahaney, Director of Advocacy and Legal Analyst for Partners in Promise. This is a presentation I've given previously at special education conferences and for a national legal publication, and I wanted to share it with you, our PIP audience. Today, I'm going to talk about a critical truth: that special education is a civil right, not a privilege. Too often, families of children with disabilities feel like they're asking for something extra when, in reality, they are advocating for what their child is legally entitled to. This presentation will walk through the foundation of special education law, the federal laws ensuring the rights students with disabilities have, why these protections matter, and lastly, what's your piece of the pie?

**00:00:32** Special education law is rooted in the principle of equity. The federal government recognized the importance of educating children with disabilities and recognized the federal government's obligation to ensure that students with disabilities receive a free and appropriate public education, also known as FAPE. This is guaranteed under federal laws such as the Individuals with Disabilities Education Act, or the IDEA, and is reinforced by Section 504 of the Rehabilitation Act of 1973, as well as the Americans with Disabilities Act of 1990, or the ADA. Together, these laws affirm that access to education is not conditional. It's a right for every child, regardless of disability.

**00:01:04** Let's talk about the what, where, and how of special education. Special education is specially designed instruction at no cost to the parents to meet the unique needs of a child with a disability. Special education is wherever learning takes place: in the classroom, at home, in the hospital, and other settings. And the how is important—according to the needs of the student to learn.

**00:01:40** I'd like to pose a question to you: Is public education a civil right? What do you think? Let's review an important law, the Civil Rights Act of 1964. This law provides the constitutional framework for special education. The two main provisions are authorizing protections against discrimination, as well as prohibiting discrimination by recipients of federal funds.

**00:02:15** As you likely know, all states receive federal funding and, specifically, receive funding to help with administering special education. Essentially, because states receive federal funds, they're prohibited from refusing to educate children because they are disabled. When I say special education is a civil right, I mean that this law exists to protect children from discrimination and exclusion.

**00:02:51** Without these laws, children with disabilities might be denied entry to schools, certainly denied services, or forced into settings where their needs are not met. Civil rights and education are about ensuring equal opportunity—not just physical access to classrooms, but the support and services that allow students to learn. Context and intention matter. Congress

passed this law to protect against discrimination because the federal government is responsible for assigning constitutional rights for all citizens. This act created a constitutional norm.

**00:03:28** Additionally, in order to prohibit discrimination, the Civil Rights Act of 1964 was passed by Congress because it recognized the federal government's responsibility to authorize federal protection of the rights granted by the Constitution. This guarantees all citizens are equally protected. Let's talk about how laws create policy.

**00:04:05** Congress passes a law, which creates federal legislation. From that, federal regulations are created, followed by federal policy, which then trickles down to state laws, state regulations, and finally, state policy. Here's a graphic to show how it works in education. Congress passes a law, then gives authority to a federal agency to create regulations meant to carry out the law. Essentially, the "here's how we're going to do this" for special education. The U.S. Department of Education establishes the regulations and policy to implement the IDEA.

**00:04:39** That's how laws are implemented by regulations. From those regulations, policies are created, and that's how regulations are implemented by policy. This graphic demonstrates how federal law flows all the way down to the classroom. The language of federal regulations and policies is important because it conveys the intention of the law.

**00:05:14** During the civil rights movement, identifying race as a basis of discrimination was extraordinarily important. Similarly, identifying disability as a basis of discrimination is equally important. Congress understood how important it was to identify legally protected subgroups for the purpose of assigning rights to and prohibiting against the discrimination of a section of the population.

**00:05:52** This law is one of my absolute favorite laws because the language of the law is extraordinary. The Rehabilitation Act of 1973 includes Section 504, securing disability rights. If you ever want to understand how this law followed the Civil Rights Act of 1964 and why it took nine years to get passed, I strongly suggest you check it out. Without question, the Civil Rights Act of 1964 set the groundwork for the passage of this law.

**00:06:29** The Rehabilitation Act of 1973 gives two main protections to individuals with disabilities. This act prohibits discrimination against handicapped individuals in programs or activities that receive federal assistance. And secondly—and this is my favorite part—this law prohibits excluding, denying, or limiting participation of handicapped persons in activities provided for non-handicapped persons. Let that sink in.

**00:07:05** Of course, knowing the law and experiencing it are two different things. Many families face barriers such as schools minimizing the impact of a disability, which can reduce the extent of services provided, long delays in evaluations, lack of access to trained professionals, and yes, being excluded. Some parents are even told they're asking for too much. Here's the truth: Asking for the services your child needs is not asking for too much. You're asking for the education your child has a right to and needs to succeed at learning.

**00:07:44** Let's go over a few provisions of Section 504. The law provides explicit equity. Secondly, results of services and programs are not inherently equal. This law provides children with disabilities an opportunity to obtain the same result or gain the same benefit—ultimately to reach the same level of achievement. This law expressly states public education programs that receive federal funding must provide a FAPE to students with disabilities.

**00:08:22** And lastly, the instruction given to students with disabilities is specifically designed to meet their educational needs equal to meeting the educational needs of non-disabled students. What does all this mean? Section 504 explicitly says the benefit of the service should be the same. Recipients of the same service shouldn't expect the same result, but the benefit should be similar. Now, this is where my legal nerd side will really show. The Tenth Amendment to the U.S. Constitution is one of my absolute favorite amendments to talk about. Let's read it together.

**00:08:59** "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." This means if Congress doesn't expressly give the U.S.—the federal government—powers, then the powers belong to the states and, therefore, the people. This is beautiful. This means the federal government provides constitutional protections and leaves it to the states to govern themselves.

**00:09:36** As military families, we move across state lines every few years and have undoubtedly experienced how states simply do special education differently. The fundamentals must be the same, but we have to learn how each state and each school district operates. This is a huge challenge, and it gives way for our experiences to be anywhere in between really great or really terrible. However, having this context can help us understand the federal protections move with us no matter where we go. Let's move to the federal law that outlines special education: the IDEA.

**00:10:10** Special education is not a favor from the school. It is a legal obligation. Schools must identify, evaluate, and provide services to eligible children. This slide gives you a quick rundown of the purpose of the IDEA. In addition, parents have the right to be part of the decision-making process, to access records, and to challenge decisions they believe are unfair or don't appropriately meet the needs of their child. And importantly, students have the right to an Individualized Education Plan, or an IEP, designed to meet their unique needs and prepare them for future education, employment, and independent living.

**00:10:47** Not to sound like a broken record, but context matters. Let's look at the numbers of how many children with disabilities are enrolled in public schools. According to the National Center for Education Statistics for the 2022-2023 school year, this chart shows the number of children enrolled in public education totaling 49.6 million children. In stark contrast, 7.5 million children are served under the IDEA Part B.

**00:11:27** As we close this webinar, what's your piece of the pie? Nope. Rights aren't pie. The educational rights of 7.5 million children with disabilities do not take away from the rights of the 49.6 million children who do not have a disability. They are not competing interests. Every child's right to an education is not negated by their disability. As advocates, educators, and

families, we must continue to emphasize that special education is not about extras or special favors. It's about an equitable opportunity for our kids.

**00:12:02** When we work to uphold these rights, we move closer to a school system where all children, regardless of ability, are seen, supported, and valued. To close, special education is not a privilege. It is a civil right that safeguards the dignity and future of children with disabilities. By understanding the law, advocating for our children, and working in partnership with schools, we work to ensure these rights are honored. Thank you for being part of this conversation and for your commitment to protecting and advancing the rights of all military children. The law provides the foundation, and it's our shared responsibility to make sure those rights are fully realized. Thank you so much for exploring a topic that means so much to me.