

## Inclusive Education in the United States and Internationally: Challenges and Response

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**Abstract:** Achieving inclusion of children with disabilities in general education remains a challenge. This article discusses United States and international legal developments and relates educational inclusion to controversies within the disability studies movement. It considers questions that have been raised about integrated education and concludes that inclusion should remain the goal, but that more attention must be devoted to making educational inclusion work.

**Key Words:** special education, disability studies, inclusion

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Historically, children with disabilities have been excluded from education and, when allowed into school, kept in separate settings where the expectations are low and the quality of services lower. Political action culminating in statutory change corrected that condition, so that in many societies children with disabilities now make their way through the schoolhouse door and receive some basic level of educational services. But achieving the goal of full inclusion in classes with nondisabled peers remains a challenge, and some writers have raised questions about whether overcoming that challenge is a worthwhile enterprise. In this article, I discuss the challenges and the questions, concluding that integration should remain the goal, but that more attention should be devoted to the mechanisms that will make the goal a desirable one. The article begins with a brief history of inclusion in American special education law, then takes up some legal sources from outside the United States. It continues with a discussion of educational inclusion in relation to ideas developed by the international disability studies movement. It considers criticisms of the educational effectiveness of inclusive education, then discusses some possible solutions for the problems raised concerning inclusive education.

### A Brief History of Inclusion in United States Special Education Law

#### Laying the Foundations for Inclusion

Two court decisions from the 1970s form the foundation of federal special education law in the United States. In *PARC v. Pennsylvania* (1972) and *Mills v. Board of Education of the District of Columbia* (1972), the class action plaintiffs asserted that by failing to provide educational services that met their needs, the defendants violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The *PARC* class consisted of children with mental retardation who had been excluded from public school. The court approved entry of a consent decree requiring, among other things, the placement of each child with mental retardation “in a free, public program of education and training appropriate to the child’s capacity” (p. 285). The decree provided that:

“ . . . [P]lacement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is

preferable to placement in any other type of program of education and training” (p. 307).

The fundamental educational policy supporting mainstreamed placement to the greatest extent possible reflected current best educational practices, but also had antecedents in judicial activity in other contexts. The activists who brought the initial cases asserting a constitutional right to education for children with disabilities had also worked on or were familiar with the contemporaneous litigation concerning conditions in institutions for persons with intellectual disabilities and mental illness. One of the most prominent claims the advocates asserted in those cases was that persons with mental disabilities should not be separated from the outside world unnecessarily. Courts ultimately recognized the principle that persons could not be involuntarily civilly committed unless dangerous to themselves or others, with the Supreme Court declaring, “[T]here is no constitutional basis for confining persons [with mental illness] involuntarily if they are dangerous to no one and can live in freedom... Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person’s physical liberty” (*O’Connor v. Donaldson*, 1975, pp. 575-76). Over time, courts adopted the idea that among restrictive settings, the least restrictive is to be preferred (*Youngberg v. Romeo*, 1982).

These ideas resonated in policy-making bodies other than courts. When federal administrative agencies drafted regulations implementing section 504 of the Rehabilitation Act (which bars discrimination against persons with disabilities in federally assisted activities) (2006, originally passed 1973) and title II of the Americans with Disabilities Act (which bars discrimination against persons with disabilities in state and local government services, programs and activities) (2006, originally passed 1990), they included provisions forbidding separate services to persons with disabilities unless necessary to provide services that are as effective as those provided others (Section 504 Regulations, § 32.4(b)(1)(iv), 2006; ADA Regulations, § 35.130(b)(1)(iv), 2006). They also imposed the requirement that the state or local government administer services in the most integrated setting appropriate to the needs of qualified persons with disabilities (Section 504 Regulations, § 32.4(d); ADA Regulations, § 35.130(d)). This latter provision of the ADA regulations radiated its influence back to the Supreme Court by furnishing the grounds for the holding in *Olmstead v. L.C.* (1999) that states must provide community based treatment for persons with mental disabilities when such a placement is appropriate, the individual does not oppose the placement, and the placement can reasonably be accommodated.

The litigants and judges in *PARC* and other special education cases also drew on the history of the racial desegregation campaign in the United States. The challenge to Jim Crow schooling went on for more than a generation before the Supreme Court recognized in *Brown v. Board of Education* that “[s]eparate educational facilities are inherently unequal” (1954, p. 495). *Mills*, a case similar to *PARC* filed by a broad class of children with disabilities excluded from the District of Columbia schools, quoted *Brown* at length, and relied as well on race discrimination cases specific to the District of Columbia (pp. 874-75). The comparison is obvious between the racial separation that existed between white and African American schoolchildren and the diversion of children with disabilities into separate locations in which expectations for their success diminish and opportunities for greater learning vanish. Distinctive treatment of those with disabilities and those without confers the same sort of stigma associated with separation of the races into inferior and dominant groups (Goffman, 1963, p. 4).

The Education for All Handicapped Children Act of 1975, the federal law that followed the *PARC* and *Mills* cases and required American states and school districts to provide all

children with disabilities a free, appropriate public education, established that to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled. Special classes, separate schooling, or other removal of children from the regular educational environment is to occur only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily with the use of supplementary aids and services (Education for All Handicapped Children Act of 1975, now Individuals with Disabilities Education Act (IDEA), 2006, § 1412(a)(5)(A)). The preference for inclusive placement was based on strong policy recommendations from professionals involved in the education of children with disabilities (Sheffler, 1981). IDEA nevertheless permits, and has always permitted, highly restrictive placements. In the earliest appellate and Supreme Court decisions under the law, several cases required school districts to pay for placements in residential schools or other children-with-disabilities-only settings that the parents contended their children needed in order to learn (e.g., *Burlington Sch. Comm. v. Dep't of Educ.*, 1985).

### Presumption in Favor of Integration

Judicial decisions from the early years of the federal special education law established that the statutory provision and the regulations enacted to enforce it create a presumption in favor of least restrictive, more integrated placements. *Roncker v. Walter* (1983) vacated and remanded a lower court decision that placed a child with severe mental retardation in a county school that had no children other than those with retardation. The appellate decision found that the lower court had ignored the “strong congressional preference in favor of mainstreaming” (p. 1063). The appellate court stressed: “The perception that a segregated institution is academically superior for an handicapped child may reflect no more than a basic disagreement with the mainstreaming concept” (p. 1063). The court recognized that the child had not made progress when previously schooled in an integrated setting, but the crucial question was what services would be provided there. The court said that in order to comply with the congressional mandate, the lower court would have to “determine whether the services which make [a segregated] placement superior could be feasibly provided in a non-segregated setting” (p. 1063). If they can, the integrated placement must be provided.

Some other courts were less adamant in upholding the integration obligation. *Daniel R.R. v. State Board of Education* (1989) affirmed a decision that kept a child with developmental disabilities in a separate classroom, relying on school district claims that the child could not satisfactorily be educated in a regular education setting. The court, nevertheless, treated integration as the presumptive choice: “Congress preferred education in the regular educational environment.” In applying that presumption, “First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. . . If it cannot and the school intends to . . . remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate” (p. 1048). Other cases approving highly restrictive placements also nodded to the integration presumption, although they ruled that integration was overcome by other considerations under the specific circumstances present (e.g., *DeVries v. Fairfax County Sch. Bd.*, 1989).

In the 1990s, two prominent cases appeared that not only applied the presumption in favor of integration in a rigorous way, but also took seriously the importance of delivering services that would enable the child to succeed in the mainstream. In *Sacramento Unified School*

*District v. Rachel H.* (1994), the court upheld a lower court decision requiring a school district to place a child with severe mental retardation in a second grade regular education classroom. The court of appeals said that disputes over integration should be evaluated by considering (a) the educational benefits of full-time placement in a regular education class, (b) the non-academic benefits of integrated placement, (c) any effect of having the child with a disability in the mainstream class on the teacher and other members of the class, and (d) extraordinary costs of mainstreaming the child. The court relied on the lower court's evidentiary findings that the child was making progress on her individual educational goals, even though she was not learning the same material as her classmates, and that she gained non-academic benefits in terms of self-confidence as well as social and communication skills. The presence of an aide solved any problems with potential absorption of disproportionate time from the teacher's other activities, and the cost was not insurmountable.

*Oberti v. Board of Education* (1993) involved an eight-year-old child with Down's Syndrome; the school district wanted to exclude him from a regular classroom and place him in a special education class. The court of appeals affirmed a lower court decision in favor of the child's parents, who contended that the child could be educated in his regular education classroom if he were provided adequate support services. In the mainstream class, the child had displayed behavior problems including tantrums and aggression towards classmates. The behavior gradually abated after placement in a self-contained class for children with multiple disabilities. Experts testified that if the child received special support such as a behavior modification plan and instructional modifications, he could learn in a regular education class, and that the experience would assist him in working and communicating with children who were not disabled. The modifications to the curriculum would include parallel instruction, where the child would work separately within the classroom on activity similar to, but at a lower level than, the work of his classmates; some separate resource room instruction would also be provided. Speech and language therapy could be provided most effectively within the regular class environment.

The court identified an "apparent tension within the Act between the strong preference for mainstreaming . . . and the requirement that schools provide individualized programs tailored to the specific needs of each disabled child," but said that the tension could be resolved by the school's provision of supplemental aids and services to enable the child to be educated for a majority of the time in a regular classroom while still addressing unique educational needs (p. 1214). Adopting the multi-factor test from *Daniel R.R.*, the court found the efforts of the school to accommodate the child in the mainstream to have been insufficient. It further found that the benefits of placement in a regular education classroom were great, if the curriculum were properly adapted, and it concluded that adequate supportive services would minimize the likelihood of a significantly disruptive effect on the classroom.

### Supplementary Services

Not all cases have taken the inclusion requirement as seriously as *Rachel H.* or *Oberti*, particularly in the insistence on schools' making mainstreaming work by adding supplementary services. Cases continue to appear in which the courts find the presumption in favor of integrated settings overcome by considerations of educational appropriateness, despite arguments that the goals are not incompatible if adequate supported services are provided (e.g., *Beth B. v. Van Clay*, 2002; *Sch. Dist. v. Z.S.* 2002).

Nevertheless, as *Rachel H.* and *Oberti* indicate, much of the debate over the application of the least restrictive setting mandate in the United States has shifted from a for-it or against-it clash to a discussion of what must be done to make it work. Cases thus tend to turn on the question of which related services the school needs to supply, at what level of intensity. Accordingly, one may conclude that the statutory language requiring “that removal from the regular educational environment occurs only when . . . education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily” is not just a prohibition on unnecessary separate schooling but a positive entitlement to the supplementary aids and services needed to make mainstream education work (Weber, 2001).

The role of trained, committed teachers and aides delivering specialized services has emerged as a major issue. In a recent case, a federal court of appeals found that a child’s segregated educational program was inconsistent with the law because the school had developed it without the participation of a general education teacher who could provide insights into how to adapt general education to meet the child’s needs (*M.L. v. Fed. Way Sch. Dist.*, 2005). Another court of appeals rejected a school district’s proposal for a less integrated placement for a young child with autism when the child was succeeding in a private general-education preschool chosen by her parents, in which she had the assistance of an aide and an intensive applied behavioral analysis program delivered primarily at home (*L.B. v. Nebo Sch. Dist.*, 2004).

## Discipline

The courts have recognized that what makes inclusion work is not just personnel and specialized instruction, but also modification of policies. In particular, if children are to learn in the mainstream setting without facing constant suspension or other penalties for conduct related to their disabilities, schools have to modify their disciplinary policies. Early cases permit children’s exclusion from ordinary school settings for behavior that is alarming to the intolerant, but of itself no impediment to anyone’s learning, such as uncontrollable drooling and facial contortions (e.g., *Beattie v. Board of Education*, 1919). The *Mills* case illustrated the effect of these practices in 1972: One of the named plaintiffs, a child with a brain injury, was excluded from school because he wandered around the classroom. Two other plaintiffs, whose disabilities were not specified, missed several years of schooling after exclusion from third or fourth grade for having “behavior problem[s]” (p. 878). The court issued a decree forbidding the school system from suspending a child from the schools for disciplinary reasons for any period in excess of two days without affording a hearing and without providing for the child’s education during the period of the suspension.

Disciplinary decisions continue to be a source of exclusion from mainstream educational settings, although current law affirms the obligation not to discipline for behavior related to the child’s disability, affords procedural protections, and forbids total cessation of services (IDEA, § 1415(k)). The most recent amendments to the special education law permit exclusion of children from their ordinary placements if they possess weapons or drugs in school or inflict great bodily injury, even if the behavior is related to their disability, but the exclusion is time-limited and other misbehavior related to disability is to be treated as a basis for improved services, not long-term exclusion.

Policies other than disciplinary ones may also present obstacles to realizing the simultaneous goals of effective learning and integration. The *L.B.* case cited above in connection with personnel and curricular issues is of particular significance because it overturns the tyranny

of the six-to-seven hour school day and forces the school system to provide a program that takes place largely after school hours, so the child may attend integrated classes when school is in session. Some American courts have enforced the law to promote integration by requiring changes in teacher certification processes to eliminate inflexible instructional groupings and facilitate more inclusive classes (e.g., *Corey H. v. Bd. of Educ.*, 1998; see also *Reid L. v. Ill. State Bd. of Educ.*, 2002).

An additional step to facilitate educational success in mainstreamed education is aggressive action by schools to prevent harassment of children with disabilities and to stop it when it occurs. Courts have upheld claims for damages relief against schools and individuals under the Americans with Disabilities Act and the common law duty not to inflict emotional distress when teachers have responded to the placement of children with disabilities in mainstream settings by harassing the children or encouraging their peers to do so (e.g., *Baird v. Rose*, 1999). Nevertheless, there are numerous obstacles to suits of this type, and an increase in enforcement activity would facilitate inclusive education (Weber, 2002). As long as 25 years ago, a court affirmed that the likelihood of encountering hostile attitudes is not a justification for separate schooling, but rather a basis for ordering enhanced support for the child (*Campbell v. Talladega County Board of Education*, 1981).

## IDEA Amendments

The most recent amendment to the federal special education law, called the Individuals with Disabilities Education Improvement Act of 2004, has potential to promote integration of children with disabilities in general education. The new law allows up to 15% of federal special education money to be used for early intervening services for children who have not formally been found to have a disability (IDEA, § 1413(f)). This innovation blurs the distinction between children designated as children with disabilities and other children, and accordingly may diminish the stigma that currently follows from labels of specific disabling conditions (Garda, 2004, p. 443). The new law also enhances coordination with the No Child Left Behind initiative, which establishes that a school may become in need of improvement or corrective action if any of various subgroups of its students, including students with disabilities, fails to make adequate progress towards meeting state grade-level achievement standards (Strengthening and Improvement of Elementary and Secondary Schools Act, § 6311(b)(2)(C)(v)(II)(cc)). The amended special education law provides that students with disabilities must be fully included in district-wide achievement measures, and that the assessments will count in determining the need for improvement or corrective action. These innovations may encourage school administrators to take the same responsibility for special education students that they take for students in general education, and to devote resources to bringing the achievement of special education students up to grade level. The focus on achievement may be expected to facilitate students' integration in mainstream education, as administrators realize that the overwhelming number of students with disabilities can succeed in mainstream instruction at grade level if provided adequate accommodations and supplemental services.

## Some Approaches from Outside the United States

### Canada

In Canada, the Supreme Court's decision in *Eaton v. Brant County Board of Education* (1997) denied the request of parents to keep their child in an integrated school setting. The child, a 12-year-old with cerebral palsy, lacked the ability to communicate through speech or sign language; she also had mobility limits. The Ontario Special Education Tribunal ruled that the child should be educated in a segregated special education classroom, and the Supreme Court found no violation of the equality rights guaranteed by the Canadian Charter of Rights and Freedom. The Supreme Court applied a best-interests-of-the-child standard. Justice Sopinka stated: "In some cases special education is a necessary adaptation of the mainstream world which enables some disabled pupils access to the learning environment they need in order to have an equal opportunity in education" (par. 69). The decision refused to adopt a presumption in favor of integrated schooling, though it acknowledged that "integration should be recognized as the norm of general application because of the benefits it provides..." (p. 69).

The *Eaton* decision appears incomplete because it does not discuss in any detail the role of specialized services in making mainstream education work. Separate placements may well be superior to integrated settings when there are no curricular modifications or support services in the integrated placement. But if a best-interests standard is to be applied meaningfully, the options should be supplemented to include something other than either inclusion with no modifications or completely separate education. Approaches taken in other industrialized societies may not be any more hospitable to inclusion than that found in the *Eaton* decision. Theresia Degener and Gerard Quinn (2002, part 1.C.3.a.(ii)) describe a 1996 decision by the German Federal Constitutional Court rejecting the claim of a girl using a wheelchair for mobility for access to a regular school. The court ruled that the exclusion did not violate constitutional anti-discrimination provisions.

## The United Nations

### *International Convention on the Rights of Persons with Disabilities*

The United Nations General Assembly just passed the International Convention on the Rights of Persons with Disabilities (Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 2007). Article 24 deals with education. The text declares that the States Parties recognize the right of all persons with disabilities to education, and that States Parties shall ensure an inclusive education system directed to the development of the child's personality, talents, and creativity, as well as the child's mental and physical abilities, to their fullest potential. With specific regard to inclusion, the text provides that States Parties must ensure that "Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability" (Art. 24, § 2(a)), also that "Persons with disabilities can access an inclusive, quality, and free primary education and secondary education on an equal basis with others in the communities in which they live" (§ 2(b)). The text further requires States Parties to give persons with disabilities "the support required, within the general education system, to facilitate their effective education."

There were alternate texts that were considered, including one that stated, "In those circumstances where the general education system cannot adequately meet the individual support needs of persons with disabilities, States Parties shall ensure that effective individualized support

measures are provided in environments which maximise academic and social development, consistent with the goal of full inclusion” (§ 2(d)).

The language chosen by the drafters of the convention suggests a decision not to accept any possibility that the general education system may fail to meet the needs of all children. The commitment is to provide inclusive education, and to provide supports to make inclusive education meet children’s needs. The draft, however, also does not take a clear position on whether parents can choose programs for their children that are less inclusive than general education. The text forbids exclusion from general education and requires access to inclusive education, but it does not appear to bar States Parties from offering less inclusive options. Additional provisions call for facilitating the learning of Braille, sign language and other alternate forms of communication, as well as peer support and mentoring. The text requires “the promotion of the linguistic identity of the deaf community” and insists “that the education of persons, and in particular children, who are blind, deaf and deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development” (§ 3(a)-(c)).

On topics other than education, the convention draft adopts an approach strongly in favor of inclusion and against separation. Article 3 states that the fundamental principles of the convention embrace, “Full and effective participation and inclusion in society” (§ (c)). Discrimination is defined as exclusion and restriction of rights and freedoms, as well as failure to provide reasonable accommodation (Art. 2, par. 3). The draft affirms the right to live independently and be fully included in the community (Art. 19).

If the convention reaches widespread adoption, retains its current form, and is made enforceable, its effects on education will be quite uncertain. In *Eaton* and many United States and other countries’ special education cases in which school systems insisting on separate schooling prevail, the parents wanted general education for their children, and demanded appropriate program modifications and extra services. If the convention were interpreted to require States Parties to honor parents’ choices, the cases would be decided differently. But apart from imposing an obligation to provide support, the convention does not specify what school systems need to do in terms of enhanced services for children with disabilities in mainstream settings. If the specialized services that children need in order to succeed in inclusive placements are not available, parents may effectively be denied access to integrated schooling for their children. Similarly, if disciplinary policies are not modified and harassment stopped, parents’ adaptive preferences are likely to be for separation. If the convention is interpreted in line with cases such as *Rachel H.* and *Oberti*, however, requiring schools to depart from standard operating procedure and greatly expand services and make policy modifications for children with disabilities in general education, the parents could make the choice for inclusive education. The requirement of “environments which maximize academic and social development” for children who are deaf, blind, and deaf-blind in section 3 of the education article may imply the possibility of separate educational settings for children with those disabilities. The desirability of those options is a subject of ongoing discussions in the disability rights movement generally.

### *The Salamanca Statement*

The draft Convention builds on previous international efforts to shift policy towards inclusive education for children with disabilities. In 1994, representatives of 92 governments



and 25 nongovernmental organizations adopted the Salamanca Statement on Principles, Policy and Practice in Special Needs Education. The Statement declares that “those with special educational needs must have access to regular schools which should accommodate them with a child-centered pedagogy capable of meeting these needs” (p. vii). The statement thus recognizes both the importance of inclusion and the need for accommodations to make it successful. The statement also contains exceptions and limits, however. Governments are urged to adopt “the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise” (p. ix). Specifically, assignment to separate schools or special classes or sections within a school on a permanent basis is to take place “only in those infrequent cases where it is clearly demonstrated that education in regular classrooms is incapable of meeting a child’s educational or social needs or when it is required for the welfare of the child or that of other children” (p. 12). In comparison to the draft convention, the statement gives more leeway for governments to deny inclusion on the basis of claimed educational goals.

With respect to separate education of children who are deaf or deaf-blind, the statement continues:

“The importance of sign language as the medium of communication among the deaf, for example, should be recognized and provision made to ensure that all deaf persons have access to education in their national sign language. Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in special schools or special classes and units in mainstream schools” (p. 18).

This approach reflects ambivalence about separate schooling for persons who are deaf.

### Integrated Education and the Disability Studies Movement

The early years of what became the disability studies movement were marked by attention to the social constructs that exclude persons with disabilities from mainstream society. The effort was integrationist and inclusionary (tenBroek & Matson, 1966). Timothy Cook (1991) accurately described the achievement in the United States of the Americans with Disabilities Act as the move to integration. The emphasis was on removing social, cultural, political, and physical barriers that prevented people with disabilities from participating in mainstream society. Leaders of the movement advanced various ideas: that the medicalizing of disability and consequent imposition of legal, attitudinal, and physical constraints marginalize persons with disabilities, effectively socially constructing disability (Linton, 1998, p. 35); that persons with disabilities are members of a minority group whose political and civil rights the majority refuses to recognize (tenBroek & Matson, 1966), and that economic and social structures devalue and exclude persons who do not meet an able bodied ideal (Hahn, 1997). Inclusion emerged as a priority for legal and social reform.

The commitment was not merely one of words. Inclusion lay at the heart of the goals of political and social activity towards disability rights. The Center for Independent Living at Berkeley promoted equal access to education, housing, and other social goods, and soon other organizations adopted the same objective (Scotch, 2001, p. 36). The striking achievement of the

political efforts in the United States was the Americans with Disabilities Act and its mandate for integration of persons with disabilities in the mainstream of society. The 1975 Education for All Handicapped Children Act, with its qualified but resolute insistence on inclusive education, was an earlier victory along the road to political reform.

More recently, a number of writers who are part of the disability studies movement have advanced criticism of non-nuanced efforts simply to inject persons with disabilities into previously exclusive settings. Assertion of the right to integration with persons without disabilities still leaves the person with disabilities the different one, the other (Johnson, 2003, p. 65). Thus it may reinforce the dominant, non-disabled norm (Minow, 1990, pp. 19-48). In education, laws prescribing inclusion without doing more exalt the prerogatives of special education experts and may cast students with disabilities into settings in which they will be token, low-ranking participants in social systems run by and for those who are not deemed to have disabilities (Cook & Slee, 1999).

These insights are less a challenge to the inclusion ideal than a criticism of how inclusion has frequently been realized in practice. If the non-disabled norm shifts because of integration of people with disabilities, or if the norm can be made to disappear altogether (Davis, 2002, p. 117), a truer inclusion occurs. Part of the problem is simply that of numbers. If larger numbers of persons with disabilities integrate into previous segregated settings, people without disabilities will display fewer reactions. Surprise wears thin over time. Another aspect of the problem is economics. In societies that value wealth, the typically lower economic status of persons with disabilities limits their integration on equal terms with persons who do not have disabling conditions. Lower economic status traces back, in turn, to the failure of the workplace to provide adaptations and the failure of social systems, particularly in the United States, to shoulder more of the medical and other costs currently imposed on people who live with a disability (Weber, 2000). Some writers who remain adamant on the integration ideal stress that society needs reforms directed towards placing larger numbers of persons with disabilities into the mainstream of society and giving them more access to paying jobs, programs that cover extraordinary medical costs, and occasions for social and economic interaction on a plane of equality with others (Bagenstos, 2004).

With regard to inclusive education, the numbers and economics issues are not far from the surface, but the pervasive issue is the nature of the educational experience into which students with disabilities are integrated. Indeed, Professor Ruth Colker's (2006) recent critique of the integration presumption in American special education law stresses the failure of the general education system to adapt to the needs of children with disabilities and to change the prejudiced attitudes of mainstream teachers with respect to children with learning disabilities and other conditions. As American courts have come to realize, correcting the negative attitudes of teachers and the inflexible nature of conventional educational programming is necessary for integration to be successful.

In addition to the critiques of unadorned integrationism stand other criticisms of inclusion based on cultural integrity. One aspect of disability studies is to note, and to celebrate, disability culture. Prominent is the shared set of cultural connections that has developed around the use of sign language (Burch, 2002; Davidson, 2002). The recognition of that culture calls into question conventional inclusion practices. Inclusion may be a rationale for eliminating separate institutions that foster the use of sign. Ending those institutions challenges the continuity and growth of a linguistic minority's cultural tradition. Since these institutions typically constitute part of the educational establishment of the nations they serve, policies of educational inclusion

may threaten the culture itself. In this way, dominant cultural institutions tend to drive out minority cultures and the institutions that would preserve them (Cover, 1983, p. 53).

### Controversies About Educational Effectiveness

Numerous sources, some associated with the disability studies movement and some not, also criticize integration on the basis of educational effectiveness and related concerns about costs, disruption, and backlash. Ruth Colker (2006) argues that a presumption of a fully inclusive educational setting is not justified for children with a variety of disabling conditions. Colker compiles various sources of educational research, some of which demonstrate that teachers in mainstream settings are ill-trained to instruct students with mental retardation, and that mainstream classrooms have inadequate teacher-student ratios for the optimal education of students whose mental retardation is severe. She describes other sources as showing that mainstreamed students with learning disabilities make disappointing progress, although the sources do not make any rigorous comparison to students with learning disabilities in separate programs and some other sources cited indicate that gains in the two settings are comparable. She also demonstrates that students and teachers frequently impose stigma on students with disabilities, particularly those with learning disabilities and emotional or intellectual impairments. As Colker notes, other outsiders also experience ostracism and negative expectations when integrated with majority group members, notably African-American children suddenly placed in majority white schools.

That inclusion may be done badly is no news to people with disabilities. Similarly, anyone entering a social setting who is different is likely to be the target of stigma, particularly when the difference is manifested by the apparent failure to conform to established standards of learning or deportment (Goffman, 1963). Carefully designed interventions, such as joint work on academic and special interest projects, are needed to accomplish peer acceptance of students with learning disabilities in mainstream classrooms (Fox, 1989; see also Belkin, 2004). Not surprisingly, students with disabilities and teachers often feel more comfortable in segregated settings, particularly when the students are middle-school age or older (Gross, 2005). As noted above, the issue in contested cases in the United States has shifted from inclusion per se to the nature and quality of interventions. These interventions include teacher training, additional personnel, curricular and policy modifications, and effective action to halt harassment. A central insight of the disability studies movement is that attitudinal barriers are every bit as handicapping as physical ones. The idea is that the attitudes, not the disabilities, need fixing. Although clumsy inclusion initiatives will not improve attitudes (indeed, they will reinforce negative impressions), segregating children with disabilities eliminates any chance of progress towards that goal.

In the United States, the *Report of the President's Commission on Excellence in Special Education* (2002) stresses the importance of removing attitudinal barriers to the acceptance of children with disabilities in general education settings. One of the key findings states:

“Children placed in special education are general education children first...[C]hildren with disabilities are often treated, not as children who are members of general education and whose special instructional needs can be met with scientifically based approaches, they are considered separately with unique costs—creating incentives for misidentification and academic isolation...” (p. 6).

The Commission's prescriptions, such as adjusting financial incentives, encouraging early intervention, and enhancing teacher training, appear unlikely to be adequate by themselves to make inclusion work properly. Nevertheless, acceptance of the central insight that all children are the responsibility of the general education system is logical as a first step in changing prevailing attitudes. Changes in policies and programs would then proceed from the premise that children with disabilities should achieve successful education in integrated settings.

Advocacy of integration is fueled in part by aspirations for a better future in the long run, even though there may be difficulties with reaching that ideal state. In other contexts, the law pursues integration even though lingering prejudice may result in hardship. In *Palmore v. Sidoti* (1984), the United States Supreme Court ruled that it is improper for a court to consider the social stigma that a child might feel remaining in the custody of a Caucasian mother who is living with an African American man after divorce from the child's father. Chief Justice Burger declared: "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect" (p. 433). The aspirational is never far from the descriptive. Even Colker, who elsewhere criticizes proponents of the inclusion presumption for relying on "moral, rather than empirical arguments" (p. 832) decides, apparently on a moral basis, not to consider any detrimental impact of inclusion or noninclusion on children without disabilities, "Because *all* children are entitled to an adequate and appropriate education in our society" (p. 793, note 12).

### Some Possible Compromise Solutions

Is there room for compromise in the conflict between supporters and skeptics of integration? One possible compromise solution that has received some support, particularly with regard to matters of cultural preservation, is choice. Parents might be permitted to choose separate schooling, provided that integrated alternatives remain available. This approach has its attractions. Cultural institutions valued by persons with blindness or deafness can continue, but no one will be forced into them by the lack of anywhere else to go. Ultimately, however, choice presents its own problems. Few societies will be wealthy enough to provide intensive services in both integrated and separate settings. Parents will be forced to make choices based on adaptive preferences. Moreover, if too few parents choose the separate options, the institutions will wither. The choice option is most realistic at the post-secondary level, where students are likely to be making their own decisions after exposure to the mainstream, and where relocation to a setting away from home may be part of the cultural norm for all students.

Even if choice is not the solution to the problem of preserving institutions that further disability culture, the nature of parental choice matters with respect to children's educational programs. When parents push for a more integrated program and the schools resist, it is unlikely that the parents are the ones in the grip of standard operating procedure. Conversely, when the school system proposes a more integrated setting and the parents resist, the parents may be harboring outdated attitudes, but the integration may in fact be deficient for lack of skilled personnel and quality services, curricular or disciplinary policy modifications, and protections against harassment. A classic work of procedural jurisprudence contends that what should determine the presumption for court cases should be which side is more probably correct in the run of litigated disputes (Cleary, 1959, p. 13). When parents fight for inclusion and schools resist, it is more likely than not that the schools are protecting their own interests, not those of the students.

A compromise solution to some of the questions about the educational effectiveness of integrated schooling might be found by attention to the temporary nature of many educational arrangements. There are two temporal dimensions that matter. First, separate schooling may be justified for part of the school day or for periods before the beginning or after the end of the school day. Individual tutoring in a resource room setting for a class period is an example. Individual activity for a small fraction of the day does not undermine a general program of mainstream education. Some opponents of a presumption in favor of inclusion do not recognize this option. Colker, in particular, challenges inclusive approaches on the grounds that resource room services may be helpful for children with some disabling characteristics, when in fact the judicious use of resource room activities may be part of an otherwise highly inclusive program, as the *Oberti* court recognized.

In addition, temporal solutions may include full-day programs that are very intense and do not include interaction with children without disabilities for some period of time, if they are directed towards a dramatic improvement in the child's opportunities to participate in integrated education at an identifiable point in the near future. An example is autism treatment for preschool children, which may entail one-on-one behavioral training programs occupying most of the child's waking hours, with the goal of enabling the child to be integrated into general education kindergarten or first-grade programs with minimal supportive services. If this scenario is realistic for a particular child, the short-term separate schooling will promote long-term inclusion. The preferable option, however, is that endorsed by the *L.B.* court, which relates to the temporal dimension discussed in the previous paragraph: intensive, separate programs at home but integration in class during the school day.

### Summary

Inclusive education in the United States and elsewhere is under challenge. The experience in the United States with legal efforts to compel schools to provide integration reflects an ambivalence that is present in similar enterprises elsewhere in the world. There is good reason for the ambivalence. The integration ideal remains central to the achievement of disability rights, but concerns over subordination and cultural identity also remain. Even the educational effectiveness of integrated schooling can sometimes be questioned. Nevertheless, the problem is not with the ideal of inclusive education, but with how it has been actualized. Support services, modifications of rules, and effective action against harassment are needed to make integrated education work. Efforts to obtain provision of services, modification of school rules, and prevention of harassment are central to achieving inclusion and meeting its challenges.

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