

The Promise of FAPE and Universal Design for Learning: Greater Democratic Participation through Access in the Classroom

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Background on education disability law

It is a commonly held belief that the public education system in the United States is a cornerstone of American democracy. However, views diverge wildly from that point on regarding how to define education, how to define democracy, and how the one has an obligation to inform, shape, and interact with the other. In the history of public education, the role schools play in a democracy is dynamic and progressive, continuously being amended or expanded to extend the rights of individuals or groups who were being systematically excluded from that education. Examples of these continual re-evaluations of the democratic obligations of the institution of public education include *Brown vs. the Board of Education*, Title IX, and the Individuals with Disabilities Act (IDEA). In all these decisions, the democratic aims of equality of rights and opportunities for all individuals were codified in public education law—ensuring that schools must not discriminate or inhibit the rights of students regardless of their race, gender, or ability. Each of these decisions were certainly fraught with a tension that the role of public schools was not to extend “special rights” to particular groups. This tension gave way as social progress was made which defined the overall aspects of democracy to include equal rights regardless of social factors. Schools were always considered to be imperative in the educating of citizens to publicly engage with this democracy, and this altered the role of schools as the democracy changed over time. In addition, progress in public education has always been a litmus test for progress in the slow march towards true democracy in U.S. policies.

One indication of this progress is the movement to protect and expand rights of individuals with disabilities. This movement was realized with a series of pieces of legislation aimed at individuals both in public schools as well as the larger society. Those pieces of legislation relevant to public schools began with Section 504 of the Rehabilitation Act of 1973, which stated that “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, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” (Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794) The Rehabilitation Act of 1973 was a civil rights law designed to prohibit discrimination against persons based on disability in “programs and activities”, both public and private, that receive federal assistance. The implications for public schools were significant, because it introduced the concept of each child with disabilities having a right to a “free,

appropriate public education” (FAPE). This was a historic mandate, because students with disabilities could no longer be ignored or denied education in the classroom.

Section 504 requires several things for the definition of an “appropriate education”. First, the school must provide educational services that meet the individual educational needs of the student with a disability to the same extent as the needs of non-disabled students are met. Secondly, students with disabilities must be educated along with non-disabled students (such as in “mainstreamed” classes) to the maximum extent appropriate to the student with a disability. Thirdly, evaluation and placement processes for students with disabilities must be guided by nondiscriminatory established procedures in order to guarantee oversight in the placement and classification of students. Finally, due process procedures, giving parents and families legal recourse to challenge disability identifications, placements, and evaluations, are required. (www.ed.gov publication)

The institution of FAPE requirements in public education did more than signal a dramatic change in the public education of students with disabilities. It created definitions of “appropriate” education for students with disabilities that are not specifically delineated in regards to general education. If these standards and procedures are not met, FAPE requirements stipulate that families have a right to due process to ensure that the school districts comply with providing free, appropriate public education. General education policy has no comparable mandate that defines what constitutes an education that meets every student’s needs, regardless of their barriers to learning, and allows for due process of law if students and their families feel that education has failed to do everything it could to accommodate for the student’s barriers.

Following the 1973 law, the Education for All Handicapped Children Act of 1975 ushered in specific education-oriented reforms for special education, including the requirement for the Individual Education Program (IEP). The development and implementation of IEPs for students with disabilities was designed to increase accountability and standards for the education of students with disabilities by providing documentation of the child’s current level of educational performance, annual goals and short-term objectives for educational progress, and the identification of specific special educational services which the child will need to meet those objectives. (Huefner, 2000) The Individuals with Disabilities in Education Act (IDEA) is the latest incarnation of the law, which broadened the specifics of the IEP, appropriated funds to help school districts cover a part of the cost of implementation, and delineated specific requirements for local education agencies to provide impartial hearings and comply with due process procedures. The major principles of the 1997 law are as follows:

- 1) free appropriate public education,

- 2) appropriate evaluation,
- 3) individualized education program (IEP),
- 4) least restrictive environment,
- 5) parent and student participation in decision making, and
- 6) procedural due process (Adapted from Turnbull & Turnbull, 1993)

Like many issues of public policy, disability education law is complex and nuanced, though the above overview can at a minimum inform a discussion of the implications of the law and, in particular, the right to FAPE in terms of the public school system's fulfillment of democratic ideals.

FAPE in the classroom

Because "students with disabilities" and "special education" contain an entire spectrum of disability identification and degree of functionality, it is beyond the scope of this essay to give a comprehensive review of FAPE in the classroom. It is possible, however, to provide examples to better understand how it is manifested in public schools and classrooms. To review, "free appropriate public education" contains the following components:

1. Educational services that meet the needs of the student with a disability to the same extent as the needs of non-disabled students are met.
2. Students with disabilities are educated with non-disabled students to the maximum extent possible while still providing appropriate services.
3. Evaluation and placement processes are guided by established procedures to ensure non-discrimination; this is reinforced with periodic reviews of progress.
4. Due process procedures allow parents and families of the student with a disability to challenge the identification, placement, or evaluation of their child.

Examples of accommodations for students with disabilities include sign language interpreters in classrooms, computer software that speaks assignments out loud or reproduce written material in large print for students that have trouble reading, and elimination of time restrictions on standardized tests, just to name a few. In the case of

severe disabilities, school districts have been required to pay for a students' enrollment in a private institution with better resources and/or services to address that disability. Because of IEP requirements, parents, students, and the entire IEP team comprised of resource teachers, social workers, and speech therapists, must make collective decisions about the educational program and the student's progress. This means that for students with disabilities, educational programs and assessments are determined with much broader participation in decision making as compared to non-disabled students. In cases where parents or guardians have felt that a school district has failed to provide FAPE, there has been legal recourse for those families to ensure that their child with disabilities is receiving education to meet their needs. In fact, because of ambiguities in Section 504 and subsequent legislation such as the IDEA, the courts and case law have often stepped in to determine the parameters of exactly what determines an "appropriate education". (Palley, 2003, p. 605) This is another example of special education and disability law extending the democratic rights of students beyond those students who are not designated as having a disability.

"Dilemmas of difference" and special education in a democracy

The institution of FAPE and other laws that protect the rights and educational pursuits of students with disabilities provided unprecedented guarantees to these students regarding the education they would receive and the rights upon which that education was based. Many have critiqued the IDEA as providing "special" rights to individuals with disabilities, rights that are greater than those granted to non-disabled students. By labeling the students with disabilities as "different", and granting them rights based on these differences, the law has created an ideological dilemma which Martha Minow terms the "dilemma of difference". She claims that civil rights laws designed to reduce inequality have also produced the following societal questions in a democracy:

"When does treating people differently emphasize their differences and stigmatize or hinder them on that basis? And when does treating people the same become insensitive to their difference and likely to stigmatize or hinder them on *that* basis?" (Minow, 1990, p.20, emphasis hers)

Because students with disabilities have particular barriers to learning, FAPE guarantees these students with accommodations, supplemental services, and other aides required to meet their educational needs. However, looking at educational disability law through the lens of Minow's dilemma of difference, a tension is revealed. Unequal treatment and inequity of opportunity is clearly an undemocratic value—the capacity of each individual to reach his or her potential is a value which upholds both the public education system and the American democracy. However, instituting rights based on difference in order to achieve equity in the classroom means that disability law is forced into this dilemma—do these rights consist of "special" rights which separate students

with disabilities from their non-disabled peers, thereby violating a tenet of democracy, or does failing to grant these rights result in inequity of education, again going against the democratic obligation of equal opportunity? Because of this “dilemma of difference” and the ensuing catch-22, it is necessary to “re-envision” the model of general education and the “appropriate education” for all students.

Given these explicit rights to an education that meets specific needs, a participatory structure for decision-making, and access to due process to make the public school system accountable, one can begin to see more clearly the criticism of the IDEA and FAPE that they are providing “special rights”. While students with disabilities have definite barriers to learning in the general classroom, they cannot be said to be only ones who experience difficulties in the regular education system. There are many more ambiguous, difficult-to-identify barriers to learning that are not granted these rights. Many of these, such as chronic malnutrition, excessive exposure to lead paint, and low birth weight may manifest themselves as cognitive or learning impairments but are also deeply rooted in social and economic factors. Other barriers, such as speaking a language other than English in the home, lack of adequate housing, instability in the student’s home life, and lack of outside resources can be just as inhibiting to receiving an education that meets the students needs, but are more obviously related to social problems. In this context, it appears “undemocratic” that students with disabilities receive the right to a “free appropriate public education” and due process under the law while other students are left to their own devices with no such guarantees. However, I propose that we instead view FAPE and IDEA as guidelines for a more democratic general classroom— for greater community participation and equity of educational opportunity. Many of the provisions in IDEA give us guidelines for improving democratic processes within schools and classrooms. Specifically, the IEP process allows for individualized instruction, geared to the students’ needs, with participation from all parties who are affected by the instruction-- including the teacher, parent, student, and other administrative staff such as social workers and speech therapists. Due process allows students and their families to hold their schools accountable and gives them opportunity to voice their concerns. Academic scaffolding, or supports, and other accommodations acknowledge individual diversity within a classroom and account for it. The right to a *free* appropriate public education indicates the acceptance by the public that it is the responsibility of all citizens and our governing structures to provide this education without cost to the individual.

Given this democratic promise, it is vital that we find a way to implement these provisions for all students. Many students, not just those with designated disabilities, face barriers to learning and may require accommodations or support beyond the one-size-fits-all curriculum. There are many levels that require reform in order to implement FAPE for all students, including classrooms, administrations, school districts, funding, etc. The following section will propose a method, to be incorporated in public

policy, that could be effective in instituting the promise of FAPE in the classroom for all students.

Universal Design for Learning-- The Promise of Democratic Reform

“Today’s typical classroom might include students whose first language is not English; students who are not reading on grade level; students with behavioral, attentional, and motivational problems; students from varied cultural backgrounds; and students classified as gifted. In addition, there are students with particular needs, such as limited vision, motor disabilities, emotional difficulties, speech and language difficulties, and learning disabilities.” (Rose and Meyer, 2002, p. 6)

In an age when teachers are under pressure to raise the academic achievement of all students in their classrooms, regardless of their internal diversity, we need to find solutions that address a multitude of challenges. No Child Left Behind and other accountability-centered educational reforms have created the need to “enable students with widely divergent needs, skills, and interests to attain the same high standards.” (Rose and Meyer, 2002, p. 6) One method of achieving this comes out of educational reform that focuses on making the classroom accessible to students with disabilities by making the curriculum adaptable to individual needs. This method of reform, Universal Design for Learning (UDL), goes beyond addressing the needs of students with disabilities and gives us insight into how to educate all students.

UDL asserts that the key which opens to door to learning for all students is to identify and remove barriers from teaching methods and materials. The UDL framework provides tools for educators to achieve flexibility in the representation of information, the provision of multiple pathways for students’ action and expression, and the provision of multiple ways to engage students according to their interests and motivations. The Center for Applied Special Technology (CAST) pioneered the principles of UDL in the curriculum. They identify them as

1. To support recognition learning, provide multiple, flexible methods of presentation
2. To support strategic learning, provide multiple, flexible methods of expression and apprenticeship.
3. To support affective learning, provide multiple, flexible options for engagement. (Rose and Meyer, 2002, p. 75)

The key to understanding the potential of UDL is to realize the near-absolute lack of flexible instructional media in today’s classrooms. The traditional media used by teachers, including speech, text, and images are deeply embedded in our pedagogical methods and curricula. By considering the appropriateness of a particular medium to

convey information, and analyzing students' facility with that medium, we realize that each student has a particular strength or weakness with printed text, speech, or still images. Speech, for instance, is very useful in conveying information if the students who are exposed to the speech are familiar with the language in which the speech is being presented, the idiomatic and cultural expressions of tone and pitch that contribute to the conveying of information through speech, the vocabulary being used in the speech, and have the capacity for hearing the speech. Additionally, text also has its limitations. It has none of the expressive cues given by spoken words, it requires facility with printed information and a solid grasp on the language and vocabulary of the text being presented. One also must have familiarity with the contextual conventions of text-- an example would be the difference between reading a narrative (start to finish), and reading a dictionary (selective reading requiring an understanding of the alphabetical system).

Given these limitations inherent in traditional media, and the various barriers to one-size-fits-all, cookie cutter learning highlighted in the quote at the beginning of this section, there is a clear need for flexible media that adapts according to the individual needs and learning styles of each student. This flexible media would guarantee that students are receiving the same educational content, while accessing this content through a format that is not impeded by the particular barrier to learning that child faces. With flexible media such as digital text and sound, and other technological aides, as well as with instruction that allows for individual differences and deliberately guides learning with an understanding of students' strengths and weaknesses, students can have more input in their own learning and more understanding of the processes through which they are taught.

UDL is an educational principle that deals with the concept of flexible media in the digital age, diversity in classrooms and the different learning styles they entail, and the current political and social context which demands accountability from teachers. It grew out of the struggles teachers face in implementing FAPE when accommodations and other supports to students with disabilities were "getting in the way" of learning for other students in the classroom. UDL allows teachers to present content and educational material divorced from the rigid format it is presented in, making it so that every student can participate in a unit on the life cycle, the revolutionary war, or the music of the Harlem Renaissance-- regardless of how they learn and what learning difficulties they might face. Instead of producing a hand-written essay on any of the above topics, students might be able to choose from writing an essay, creating a video presentation with digital images and sound, working with educational software that allows students to convey information through images and visual codes with fewer words, or a variety of other multi-media flexible formats. Each student would still be given an assignment to demonstrate their knowledge of a particular topic, but they would not be evaluated based on their facility with the hand-written format, but with

their comprehension of the material. (Hitchcock, Meyer, Rose, and Jackson, 2002; Thompson and Thurlow, 2002) One can see that this would not only be useful for students with disabilities who may have developmental or physical handicaps that prevent them from being able to write an essay, but also for students who have not traditionally had success with writing essays or had interest in school but may be motivated by working with technology or making a film. Students who speak English as a second language can demonstrate their understanding of the history or science material at hand without being penalized for their trouble in English and grammar.

UDL offers not only solutions for teachers struggling to engage students with an extreme diversity of needs and barriers to learning, students who do not have success with traditional, inflexible media, and classrooms working to comply with FAPE and No Child Left Behind. It also offers a way to get around Minow's "dilemma of difference", providing a true democratic solution. Because all children in the classroom have access to educational supports, accommodations, and alternative modes of learning, no child is singled out for "special rights" and services. UDL acknowledges the growing diversity within classroom in terms of the needs which must be met, and redefines "appropriate education" for all students. We can implement the curricular components of FAPE for all students by incorporating the principles and methods of UDL into educational public policy. UDL includes the tenets of accountability, individual choice, and academic achievement for all that are a part of current education policy. However, UDL changes the focus from one-size-fits-all curricula and high-stakes testing to the adaptable, flexible principles of FAPE and IDEA. Under UDL-driven policy, all students would still be expected to succeed, and efforts would be aimed at low-achieving students with particular barriers to learning. However, this would be done by acknowledging and accounting for the diversity of individual educational needs and presenting information in ways that remove, not erect, barriers to learning.

Bibliography

Free appropriate public education for students with disabilities: Requirements under section 504 of the rehabilitation act of 1973

URL: <http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

Department of Education summary of the FAPE requirements as mandated by section 504.

Hitchcock, C., Meyer, A., Rose, D., & Jackson, R. (2002). Providing new access to the general curriculum: Universal design for learning. *Teaching Exceptional Children*, Vol. 35, No. 2, pp. 8-17.

The authors describe specific, technologically-driven methods for making classrooms accessible using the principles of Universal Design for Learning. The article provides a framework for curriculum reform that utilizes technology and its capacity for flexible media in order to provide more opportunities for all students.

Huefner, D. (2000). The risks and opportunities of the IEP requirements under IDEA '97. *Journal of Special Education*, Vol. 33, No. 4, p 195.

The author discussed the new provisions and requirements for IEPs in the 1997 IDEA law, and illustrates both the opportunities for collaboration between special and general educators, as well as the danger of backlash against the perceived micromanagement by the federal government. Finally, she analyzes the implications for successful delivery and implementation of special education services.

Kerzner Lipsky, D. & Gartner, A. Beyond Separate Education: Quality Education for All. Paul H. Brookes Publishing Co., Baltimore, MD, 1989.

This book is a collection of essays which provides a context for the inclusion/separation debate by discussing historical trends in education in regards to civil rights and the experiences of oppressed groups. It also goes beyond historical contextualization to provide insight and alternatives to better educate all students, including students with disabilities, in the general classroom.

Minow, M. Making All the Difference: Inclusion, Exclusion, and American Law. Cornell University Press, Ithaca, NY, 1990.

The author discusses the implications and ramifications of the tension between inclusion and separation of students with disabilities. Broader issues of the difference between equality of treatment and “special treatment” within public systems are also addressed.

NICHCY and the FRC (date undetermined) The six principles of IDEA. Powerpoint presentation.

URL: <http://www.nichcy.org/Trainpkg/4ohs.pdf>

A powerpoint presentation, developed by NICHCY, that very succinctly provides the key ideas and principles of the 1997 law. Also included is some historical legislative context and definitions of such concepts as “appropriate education” and “individual education program (IEP)”.

Norwich, B (1993). Ideological dilemmas in special needs education: Practitioner’s views. Oxford Review of Education, Vol. 19, No. 4, pp. 527-546.

<http://links.jstor.org/sici?sici=0305-4985%281993%3A4%3C527%3AIDISNE%3E2.0.CO%3B2-L>

The author sought to determine to what extent individual educators felt there was a dilemma associated with the identification of students with disabilities. The study also asked teachers whether they thought these dilemmas could be resolved, and how. Conducted in the US and England, educators in both countries felt that identification and “mainstreaming” in the common curriculum presented serious challenges to educating students.

Palley, E. (2003). The role of the courts in the development and implementation of the IDEA. Social Service Review, Vol 77, No. 4, pp. 605-620.

This article highlights specific court cases and other case studies in which the role of the courts can be seen in the interpretation of the concept of free, appropriate education. Also, the author points out many ambiguities in the IDEA which have led to such extension court intervention in the implementation of the law.

Rose, D & Meyer, A. Teaching Every Student in the Digital Age: Universal Design for Learning. Association for Supervision and Curriculum Development, Alexandria, VA, 2002.

The authors provide a practical presentation of the principles and methods of UDL, and include useful templates and tools for implementing it in the classroom. While still presented in “non-universal” printed text format, the authors do their best to make the book itself as multi-media as possible, often including weblinks in the page margins where readers can access examples of the constructs and methods being described and presenting printed information in an accessible, user-friendly format

Thompson, S., & Thurlow, M. (2002). Universally designed assessments: Better tests for everyone! (Policy Directios No. 14). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes

The authors build on the principles of Universal Design for Learning and explicate the usefulness of applying those principles to assessment and evaluation. Central to this article is the idea that tests do not assess what they are intended to measure unless all non-content related barriers are removed. This article is extremely useful for any educator considering integrating UDL in their assessments, as it provides practicable tools for implementation.

Turnbull, H. R., & Turnbull, A. Free Appropriate Public Education: The Law and Children with Disabilities. Love Publishing Company, Denver, Co., 1998.

As a book geared at parents and advocates of students with disabilities receiving a free appropriate public education, this is an excellent resource on case law and legislation defining appropriate education and the legal means to receive it. The authors present very detailed and extensive information on the law.