

Chapter 2

Art Teachers and Special Education Law

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It is clear that when art teachers provided these students with opportunities for self-expression and learning about art, they opened the door to broader mainstreaming efforts as well as to broader opportunities for their students.

This chapter presents a brief look at the development of special education law, explaining both the need for this legislation and how it happened. But first, let us look at the conditions prior to legislation that changed the lives of people with disabilities and the fabric of our society. The legislative events in this chapter are organized in chronological order to better illustrate the interplay between societal trends and their reflection in the law.

Shifts in Attitude

After the Civil Rights movement of the 1960s established a legal basis for racial equality in America, it was a natural progression to apply those same rights to persons with disabilities. This gradual progress was the result of changes in attitudes within a number of different areas of society.

Parent and Professional Insistence

Along with demands for civil rights equality came parental requests for equal access to educational opportunities for their children with special needs. Parents and professionals had long recognized the importance of education for students with special needs to learn to live more independent lives. They became increasingly insistent that even children with moderate and severe disabilities should have the opportunity to be taught the skills they needed. Their efforts were ground-breaking in educational history because public education for all students was not a generally accepted concept. In 1949, for example, no states mandated public education for students with low intelligence scores (Abeson & Davis, 2002). In fact, due to commonly held, centuries-old beliefs and attitudes, many children with disabilities, especially those with moderate to severe disabilities, were too often the object of shame, misunderstanding, or mistreatment (Hunter & Macalpine, 1963; Trent, 1994).

Before the 1960s, many believed that children with serious disabilities simply did not have the "potential to learn." Many families, due to pervasive negative

beliefs and attitudes, could not imagine happy, independent lives for their children or that they could contribute to their communities as adults. One can only imagine a family's feelings of heartbreak and then relief when their child was placed in a "children's home," hospital, or other institution, probably for life.

Others felt differently and demonstrated that positive educational outcomes were possible. Margaret J. McLaughlin was one of these people. Now a Professor of Special Education at the University of Maryland, McLaughlin worked early in her career at a state mental hospital. There the children lived in conditions that we would consider deplorable today, and received no education whatsoever. However, in the early 1960s, the federal government passed one of the first laws pertaining to the education of children with disabilities in state institutions. With federal money provided by the law, the hospital administrators were able to hire McLaughlin and several young teachers and other staff – most without any background in education—to begin a school for children living in the four wards of the hospital.

Before the teachers could bring students to the school, however, they had to deal with conditions that would be considered intolerable (and illegal) today. Their school was to be located in a dirty basement of the old building that was the children's unit. The basement had empty rooms and one old, filthy, bathroom. The teachers cleaned this bathroom, snakes and all. The school's director got donations for paint and other supplies and the teachers painted the walls and made curtains for the windows. They then began to bring the children from the wards to school. Many had never been in a school. Some had been at the hospital since they were as young as 5. Yet, their dedicated teachers persevered with the goal of eventually getting at least some of the students, who were most able, educated in their community schools.

Contribution of Psychology

The rise in psychology, along with other forces, gradually changed attitudes about education for those with disabilities and brought more knowledge about the ways people learn. The public began to understand and to expect that students with special needs can learn many social behaviors and academic skills. There was an increased emphasis placed on what a student CAN do, instead of what he or she cannot do. In addition to contributing to the field of education, psychology promoted understanding and acceptance of individual differences. It was recognized that one who excels in a special skill can succeed in life. Further, psychology brought an increased understanding of mental illnesses, mental deficiencies,

and other disabilities as differences that can be addressed through education, therapy, technology, and medication.

Kennedy Family Legacy

Attitudes towards those with disabilities also changed after the election of President John F. Kennedy in 1960. Kennedy, whose sister Rosemary had mental retardation, opened the doors of public opinion. The positive media attention given to the Kennedy family increased the acceptance of people with disabilities and emotional support for their families. The Kennedy family legacy continues to open doors and offer opportunities through the Special Olympics and Very Special Arts programs initiated by Kennedy family members. These organizations are now international in scope.

Anti-discrimination Laws: Equal Opportunity for All Citizens

Following the Civil Rights movement in the 1960s, several important laws and movements interacted to increase opportunities for Americans with disabilities. These include the Rehabilitation Act of 1973, the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA), and the Americans with Disabilities Act of 1990 (ADA). Each has made its own unique contribution to the fabric of society, including education, as we know it today.

The Rehabilitation Act of 1973 (P.L. 93-112) and Section 504

Even when Americans with disabilities were aware of their rights as citizens, they were often unable to exercise those rights because of discrimination and inaccessibility. The Rehabilitation Act prohibited discrimination on the basis of disability in programs conducted or funded by federal agencies. This applied to employment and any program, including school programs, that received federal assistance.

Section 504 of the Act guaranteed accessibility and barred discrimination due to disabilities in educational programs, communication, and other activities available to non-disabled peers. A student with a physical or mental impairment which substantially limited one or more major life activities, such as thinking, learning, reading, concentrating, walking/standing, seeing or speaking, was considered disabled under Section 504.

Although Section 504 was not an education law, its requirements were relevant to school programs and the Individuals with Disabilities Education Improvement Act (IDEIA) because it required that educational and related aids and services be provided to meet the individual needs of the student. For example, students could receive related services (e.g., art and music therapy, physical and occupational therapy, speech and language therapy, etc.) or accommodations, even if they were not eligible for special education under IDEA. Section 504 required a plan for meeting the educational needs of each eligible student. The Individualized Educational Program (IEP) required by IDEA may be used to meet the Section 504 requirement, but students not served by IDEA will require a Section 504 Plan (Henderson, 2001).

The Civil Rights of Institutionalized Persons Act (CRIPA) of 1980, (42 U.S.C. Sec. 1997 et seq.)

Largely in response to social and educational advocacy by parents and professionals during the late 1970s and 1980s, Congress enacted CRIPA, which extended civil rights to children and adults with disabilities who were housed in institutions. In what became known as the deinstitutionalization movement, mental health and mental retardation institutions were closed. Whenever possible, residents were returned to their families or communities and families of children with disabilities were provided supportive community services as an alternative to institutional placement. For those remaining in institutions, CRIPA charged the Department of Justice with monitoring state institutions for people with intellectual disabilities to ensure their rights and stop abuse.

The success of deinstitutionalization efforts is evident in a 1986 study of New Hampshire's Laconia State School. Data showed that most former residents, who had mental retardation, returned to their natural families, foster parents, or group homes. They used community services and attended self-contained classrooms or special schools in their communities. Many formerly institutionalized young people were later enrolled in less restrictive education programs (Mallory & Herrick, 1986).

Although far fewer children are institutionalized today, abuse still remains an issue. Disabilities can interfere with a child's ability to ask for help, or caregivers may not believe the child's complaint. Studies show that about 80% of abuse in institutions goes unreported (National Council on Disability, 2005). Children with disabilities, both inside and outside of institutions, remain vulnerable to abuse for a variety of reasons. Today, the Department of Justice is charged with

monitoring state institutions such as jails and prisons, juvenile corrections facilities, public nursing homes, mental health facilities, and institutions for people with intellectual disabilities. For children with disabilities, abuse continues to be of concern.

The Americans with Disabilities Act (ADA) of 1990, (P.L. 101-336)

The ADA expanded protection against discrimination to public businesses and organizations, to local, state, and federal government facilities, services, and to communications. ADA encompasses public access, employment, public accommodations, transportation, and telecommunications. ADA also mandated that federal, state, and local governments may not discriminate against individuals with disabilities and that their programs and facilities must be accessible, consistent with the requirements of Section 504 of the Rehabilitation Act of 1973 (US Department of Justice, 1990).

Title II of ADA specifically protected elementary, secondary, and postsecondary students from discrimination. The responsibilities of postsecondary schools, however, differ significantly from those of school districts. If a student met admission requirements, a postsecondary school may not deny admission to a student simply because he or she had a disability. Instead of a free, appropriate education (FAPE), students with disabilities at the post secondary level must be provided with the academic adjustments and accommodations necessary to ensure equal opportunity. For example, if housing is provided to nondisabled students, comparable, convenient and accessible housing must also be provided to students with disabilities at the same cost.

Education Laws: Equal Education Opportunities

Margaret Mead in 1935 wrote, "If we are to achieve a richer culture, rich in contrasting values, we must recognize the whole gamut of human potentialities, and so weave a less arbitrary social fabric, one in which each diverse human gift will find a fitting place" (Bartlett & Kaplan, 2002, p. 761).

Following passage of the Civil Rights Act, Section 504 of the Rehabilitation Act, and the American with Disabilities Act there was increasing concern about educational opportunities for the nation's children with disabilities. Before the enactment of the Education for All Handicapped Children Act in 1975, one million children with disabilities in the United States remained excluded

entirely from the public school system. Less than half of children with disabilities received appropriate educational services that would give them educational equality of opportunity (20 USC Sec. 1400).

Education is, according to the United States Constitution, a state responsibility. Thus, there is often great variability in standards and approaches among states. Prior to the Education for All Handicapped Children Act of 1975, despite the existence of compulsory attendance laws, most states allowed school authorities to exclude students if they believed that these students would not benefit from an education or if their presence would be disruptive to the teacher or other students. In 1958, for example, the Illinois Supreme Court held that compulsory education laws did not apply to children with disabilities. Similarly, until 1969, it was a crime in North Carolina for a parent to try to enroll a child with a disability in a public school after the child had been excluded (National Council on Disability, 2005b). When allowed to attend, students with disabilities were often taught together in single, self-contained classes or schools, even if their disabilities varied widely in both nature and severity. Often these classes were held in undesirable school locations that kept distance between the students with disabilities and their non-disabled peers.

The Education for All Handicapped Children Act of 1975 (P.L. 94-142)

The Education for All Handicapped Children Act became known as the "mainstreaming" law, although mainstreaming is not specifically mentioned anywhere in the document. Its provisions formed the initial foundation that ensured that students with disabilities would receive an education appropriate to their individual needs.

Major provisions of P.L. 94-142. The Education for All Handicapped Children Act of 1975 required that public schools serve all students with disabilities and formed the basis for future special education legislation by stipulating that:

- Students with disabilities are entitled to a *free, appropriate, public education* (FAPE).
- Special education is "*specially designed instruction*, at no cost to parents or guardians, to meet the unique needs of a handicapped student, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions" (Sec. 121a.14).

- A parent, the school, or another professional can make a *referral* for an *evaluation* by the school to determine if the student has a disability and is eligible for special education services under IDEA.
- Students are to be educated in their *least restrictive environment* (LRE), (i.e., in a general education class in the student's neighborhood school, or as close to this situation as possible while providing the student an appropriate education).

- An *Individual Education Program* (IEP) is to be designed that meets the educational needs of each child with a disability, and is to include student learning goals and objectives, the basis for evaluation of progress, and the related services to be provided by the school for the student.
- *Due process of law* is to be applied in instances where there is disagreement between the school and parents about the student's identification, eligibility, placement or IEP.

Art education under P.L. 94-142. Although mainstreaming and a gradual move toward including students with disabilities in general education classes resulted from P.L. 94-142, no specific reference to the arts was made in the rules and regulations of the law.

Art was often considered more of a "related service," ancillary to the more academic subjects. However, despite the efforts of arts advocates, a specific reference to the arts was not included in the official definition of related services, which were defined as including

... transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic and evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training (Sec. 121a.13).

However, a mention of the arts was included in the P.L. 94-142 comments, which stated that related services may also include "other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy) if they are required to assist a handicapped child to benefit from special education" (Sherrill, 1979, p. 2).

today, *art therapy* is considered a related service, while art education has achieved the status of a "core academic subject" in current laws. The differences between art therapy and art education are discussed further in Chapter Eleven.

A detailed example of how art therapy can be integrated into a student's IEP and transition plan is provided in "Art and the IEP" (DiMaria, 1992). Sherrill (1979) notes that the passage of 94-142 required school systems to offer children with disabilities the same art, music and drama program options they offered to general education students. Students with disabilities "must be accorded the right to try out for chorus or band, for a role in the school play, and to submit their original art products in various school contests." She concludes,

"Savvy educators, knowledgeable about the variables which affect self-concept, will ensure not only the right to try out but also the right to succeed, at least within the framework of the same normal probability that governs the chance of non-handicapped children. The law, however, cannot mandate success; this outcome depends entirely upon the value systems and humanistic philosophy of teachers and administrators (p. 3).

When P.L. 94-142 was implemented in the late 1970s and '80s, many special education advocates criticized mainstreaming efforts for sending children into classes that were not in the "academic" mainstream, like art. They said that while these placements might have complied with the letter of the law, they were not enough. But it is clear that when art teachers provided these students with opportunities for self-expression and learning about art, they opened the door to broader mainstreaming efforts as well as to broader opportunities for their students.

The passage of P.L. 94-142, did not give art teachers confidence in their ability to work with students with disabilities. Yet, they learned to develop solutions to the inevitable problems associated with moving students into mainstream classes, whether the problems were related to art instruction or not. One middle school art teacher related how she worried when she found out that she would have been assigned students with cognitive disabilities assigned to her homeroom class. As a homeroom teacher, she would provide locker combinations to all of her students. After giving them to the students, they would have sole access to the combinations and the lockers. She worried that her students with disabilities might not remember their combinations. After discussing her concerns with the school administration and the special education teachers, she worked out the problems. The school support and the students' success encouraged her continuing efforts with students with special needs. This art teacher, among the first to work in her art

classes with students with disabilities, became one of many pioneers in creating all sorts of practical solutions to real problems.

Despite obvious progress in attitudes, legislation, and school programs, funding for public school arts programs was not always adequate and often, securing it became a struggle. Parents and teachers still recognized the need to advocate in their communities for the arts as well as for effective and adequately funded public school arts programs for students with disabilities and their non-disabled peers.

As P.L. 94-142 evolved and was reauthorized by Congress, its name changed from the Education of All Handicapped Children Act to the Individuals with Disabilities Education Act (IDEA 1990 and 1997) and then to its current version, the Individuals with Disabilities Education Improvement Act (IDEA, 2004). Along the way, new provisions were added to account for the changing values and attitudes of our society and for our new educational knowledge.

The Individuals with Disabilities Education Act (IDEA) of 1990

In this reauthorization of the Education of All Handicapped Children Act, IDEA gave particular attention to recognizing differences in services at various ages, including early intervention for very young children and transition for older students. Attention was also directed to the importance of technology and parent/school partnerships to effective education of students with disabilities.

Major changes. The especially relevant major changes in this reauthorization, IDEA 1990, include:

- The recognition that the earlier students with disabilities received intervention, the better they fared. This led to the provision of infant and toddler and early childhood services, beginning at age three.
- Increased attention to the transition to postsecondary education or employment through an *individual transition plan*.
- Increased access to educational programs, and increased access to technology.
- Stronger school/parent partnerships.

The Individuals with Disabilities Education Act (IDEA) of 1997 (P.L. 105-17)

An increased emphasis on educational outcomes in the 1990s led to important changes in IDEA. Rather than focusing on procedures designed to provide equal opportunity to students with disabilities, greater attention was given to what students with disabilities were learning and the assessment of this learning.

Increased participation in the general education curriculum, rather than just being placed in a regular classroom, was addressed. High expectations for learning were promoted along with the participation of students with disabilities in state-wide testing. In addition, parents and regular classroom teachers were given a more extensive role in evaluation and placement decisions, and in the development of the IEP, Individual Education Program.

Major changes. Important new provisions in IDEA included requirements that

- Students with disabilities participated in the general education curriculum as much as possible. If a student was not expected to participate in the general education curriculum, an explanation is required in the student's IEP, along with performance goals and objectives.
- Students with disabilities participate in state-wide and district-wide testing programs with accommodations when needed. In cases where a student could not participate in these tests, the IEP must note that alternate assessments would be used.
- Regular education teachers participated in IEP meetings.
- Subject to specific rules, a student with disabilities who is suspended for disciplinary problems should not be expelled for an extended period if it was determined that their behavior was a function of their disability.
- Parents gave informed consent for evaluation of their child and participate on the team that made placement decisions.
- Parents should be informed of their child's progress at least as often as parents of non-disabled students receive such information.
- A state developed mediation process should be made available to address any dispute between the school and parents.

IDEA '97 also addressed the disproportionate representation of minorities in special education. Many were concerned that African American students were more likely to be referred and determined eligible for special education, as were certain other ethnic groups. Conversely, some ethnic groups were less likely

to be enrolled in special education. IDEA 97 required each state to collect and examine data, including identification and placement procedures, for evidence of significant disproportionality based on race in state or Native American schools. If significant disproportionality in identification or placement was found, the state or Secretary of the Interior reviewed and revised policies, procedures, and practices to ensure compliance.

Art education under IDEA '97. There are five major implications in IDEA '97 for art educators in the areas of general education curriculum, participation in state-wide tests, provision for accommodations, and involvement in IEP development, and include the contributions of diverse cultures in lessons. More specifically, art educators should be:

- Prepared to ensure access to the general education curriculum for all students by keeping in mind curricular expectations for grade level knowledge, understanding, and skill related to both studio and academic class content. For example, verbal project descriptions might emphasize descriptive adjectives or the use of full sentences. Art history might incorporate information about historical context and visuals as well as artifacts typical of a period and culture.
- Aware of the content standards, formats, and schedules of state-wide testing in order to integrate art ideas with those expectation as appropriate. For example, older students with varying disabilities can be asked to categorize art examples in various media by matching pictures, verbally name the ways in which two examples are similar, or select postcards that illustrate a concept for a bulletin board display.
- Knowledgeable about accommodations allowed for state-wide testing in their state and willing to consult with special education personnel to identify appropriate accommodations for each student with disabilities. These appropriate testing accommodations may then be matched to individual learning tasks in the art classroom. Awareness that each student with disabilities who is receiving services has an IEP should help art teachers in the selection and implementation of needed accommodations.
- Willing to participate, as a regular classroom teacher, in the team meeting in which the IEP is developed for a student. An art educator may provide key elements in building an IEP that will provide a roadmap to positive learning, not only in art, but in other academic and social areas.
- Increase their awareness of the contributions African American and other minorities have made to the arts, as well as the cultural enrichment and impact they bring to both learning and teaching. In all areas of the arts, art

educators are expected to recognize diverse cultures and include lessons and activities that help students understand, appreciate, and embrace the growing diversity of cultures that influence our global society.

Although art teachers have a long history of promoting individual and cultural expression through the arts, general recognition of the contribution of the arts to the education of students with special needs was just beginning. The arts, too often in the past, were considered ancillary, extracurricular, or elective subjects. Their value as academic studies were becoming better recognized. Studies reported in 2000 concluded that the arts are not only extremely valuable subjects for study in their own right, but also that arts knowledge also contributes to learning in other academic subjects (e.g., Fiske, 2000). In 2001, federal law included the arts as "core academic subjects."

The No Child Left Behind (NCLB) Act of 2001 (P.L. 107-110)

The No Child Left Behind Act is a general education law designed to hold states, schools, and districts accountable for the academic achievement of all students. It represents a sweeping reform of the Elementary and Secondary Education Act (ESEA) of 1965 and an increased federal role and investment in education. NCLB is a complex and potentially far-reaching law with immediate requirements and consequences. It requires long-term planning to project accountability results in future years.

Major changes. Among the provisions of this law, many with implications for students with disabilities in art education, the following are key requirements:

- Accountability is to be based on state-developed achievement tests in grades three through eight.
- Annual Yearly Progress (AYP) of state testing results is to be publicly reported by each school, district, and state.
- Early reading instruction is encouraged to be "scientifically-based."
- Teacher qualifications are to be strengthened through criteria for "highly qualified teachers."
- School choice and supplementary services are to be offered under specific conditions to parents and students.
- Federal funds are to be allocated with increased flexibility for use by states (SEAs) and local educational agencies (LEAs).

NCLB and its subsequent adjustments also include provision for students with significant cognitive disabilities or those unlikely to achieve grade-level

proficiency on state assessments, to take alternate or modified assessments. Of greatest importance to art teachers, however, is the fact that art is specifically identified as a core academic subject in the law (Section 910 of ESEA).

Art education under NCLB. Recent studies of the important role of art for students and public support for art education in schools are clearly reflected in NCLB. However, the stress on reading and mathematics achievement in NCLB has also been cited as a cause of reductions in arts programs.

In 2000, the *Champions of Change* report (Fiske, 2000) included several studies showing clearly that students can achieve more in their academic pursuits when they have had art education. Furthermore, the studies found that the effects of art education are greater for students from disadvantaged backgrounds. One study (Catterall, 1998) analyzed the huge database of the National Educational Longitudinal Study (NELS:88) and found that students with high levels of arts participation outperformed "arts-poor" students on virtually every measure, and that high levels of participation in the arts made a greater difference for students from low-income backgrounds than for students from high-income families. Other studies supported these conclusions.

Of particular interest is the conclusion from these studies that there is no difference between the contribution of "art for art's sake" and art that contributes to learning in other subjects. Art, Fiske (2000) concludes, has great value in both forms, and suggests "a more dynamic, less either-or model for the arts and overall learning." Learning in the arts develops multiple skills and abilities, and nurtures cognitive, social, and personal development.

NCLB reaches a new level in acknowledging the important role of art in education. The law specifically includes art in the list of core academic subjects. Later, in a July, 2004, NCLB policy letter, Secretary of Education Rodney Paige stated, "I believe the arts have a significant role in education both for their intrinsic value and for the ways in which they can enhance general academic achievement and improve students' social and emotional development." He then quoted President Bush concerning the arts and education:

President Bush recognizes this important contribution of the arts to every child's education. He has said, "From music and dance to painting and sculpting, the arts allow us to explore new worlds and to view life from another perspective." In addition, they "encourage individuals to sharpen

their skills and abilities and to nurture their imagination and intellect (U. S. Department of Education, July 2004, p. 1).

Recently the National Parent Teachers Association (2005) also cited arts education as a fundamental component of comprehensive learning, adding that when schools cut arts programs, they are denying students the opportunity to develop skills that will prepare them for the 21st century.

Despite the research findings, other support for the arts in education, and identification of the arts as one of the core academic subjects in the No Child Left Behind Act (NCLB), too often schools that face budget cuts look first at arts programs for those cuts. Unfortunately, the reason cited by some schools for cutting arts programs has to do with the NCLB requirement for annual state assessments in reading and math in grades 3-8. A 2004 article notes that some schools take the position that because of the testing in reading and math, they must concentrate their funds on increasing students' proficiency in those areas. As a result, data show that arts classes are getting squeezed out of school schedules because NCLB does not require proficiency testing in art, music, dance or drama (MacPherson, 2004).

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) (P.L. 108-446)

The most recent IDEA reauthorization helps ensure equity, accountability, and improved education for children with disabilities, in part because it aligns IDEA closely with NCLB. For example, as in NCLB, the arts are included in the IDEA, 2004 definition of "core academic subjects" (Sec. 602(4) of IDEA). Other issues that are addressed, updated, or expanded are accountability, especially alternative assessment; eligibility for special education; IEPs; discipline, transition, teacher quality; disproportionality; and enforcement.

Testimony at Congressional hearings during the IDEA 2004 reauthorization provided the following demographics to support its emphasis on disproportionality, limited English proficiency, and enforcement. Between 1980 and 1990, the white American population increased by 6%, while the increase in minority populations was much higher, at 53% for Hispanics, 13.2% for African Americans, and 107.8% for Asians (20 USC, Sec. 1400), and in 2000, one of every three persons in the United States was a member of a minority group or had limited English proficiency. (P.L. 108-446, The Individuals with Disabilities Education Improvement Act of 2004.)

Major changes. Some major changes of particular interest to teachers include the following:

- Eliminating short-term objectives and benchmarks in IEPs, except for students taking alternate assessments.
- Modifying eligibility and IEP procedures to further support parent involvement.
- Requiring special education teachers to have a bachelor's degree, be certified by the state as a special education teacher, and demonstrate appropriate subject knowledge to be highly qualified. If a special education teacher does not teach core academic subjects or only collaborates with qualified academic subject teachers, special education certification with elementary level subject knowledge is generally sufficient. However, secondary special education teachers who teach core academic subjects must demonstrate competency in each subject taught, even if all the students taught the core academic subjects have disabilities.
- Allowing development of new approaches for the identification of learning disabilities by clarifying that: (1) a severe discrepancy between achievement and ability cannot be *required* to identify learning disabilities, and (2) a process for determining if a child responds to scientific, research-based intervention as part of the evaluation *may* be used. (See Chapter Six for a discussion of one possible approach, often called Responsiveness-to Intervention, or RTI.)
- Stipulating that eligibility for special education cannot be based on a lack of reading skill if the child has not had appropriate reading instruction, including five essential reading components defined in IDEA.
- Requiring that a transition plan be in place at the beginning of the school year in which the student will turn 16 and providing a written Summary of Academic and Functional Performance (SOP) when the student leaves secondary school.
- Allowing greater flexibility in the use of state funds, including use of up to 15% of IDEA money to support "early intervening" for non-disabled students with academic and behavioral problems.
- Refining IDEA's discipline provisions to allow the school to consider actions on a case-by-case basis for students with disabilities. If the violation is determined not to be caused by the disability or failure to implement the IEP, the same disciplinary procedures as those for non-disabled students may be applied.

Adding "serious bodily injury" to the code of conduct violations, with approval to a disciplinary setting for up to ten days, and a streamlined process to determine if the behavior was a symptom of the student's disability prior to a longer term placement.

Requiring states to have policies to collect data to address disproportionality. If disproportionality exists in any local educational agency (LEA), the state must review and revise its policies and require the LEA to reserve funds to serve both early intervention and over identified groups. The LEA must also publicly report its policies practices and procedures.

Enhanced reporting requirements for statewide and district-wide assessments in alignment with NCLB.

IEPs must include the following information:

- The child's present level of achievement and functional performance,
- A statement of measurable annual goals, including both academic and functional goals,
- A description of how the child's progress toward meeting these goals will be measured,
- A statement of when periodic progress reports will be provided to parents, and
- Benchmarks or short-term objectives for students who take alternate or modified assessments and a statement of why the IEP team selected a particular assessment and why it is appropriate for the child.

Regulations and Reauthorization as a Continuous Process

As this book went to press, the proposed federal regulations to guide implementation of IDEA 2004 have been published and public comment received, but the regulations were not yet finalized. Once the federal regulations are final, each state will then develop regulations and receive federal approval of them. Readers are urged to consult with their state education agency for up-to-date information on the possible impact of both the final federal and state regulations. Similarly, NCLB will be up for reauthorization in 2007, so there will, in all probability, be changes as a result of that process.

William and Joseph: Two Students, Two Stories

The stories of William and Joseph, which follow, clearly illustrate both the effects of education laws over the years and the potential for arts educators to move that progress forward. They also show us that there is still a long way to go in providing improved education, equal opportunity, and life success for those with disabilities.

William's story. "William," who has Down syndrome and moderate mental retardation, is over 40 years old. In the early 1960s, when William was old enough to go to school, there were no public school classes for him in Connecticut. He attended the only school available to him at that time, a school run by the parents of the local Association for Retarded Children (ARC). Several years later, William's family moved to a city north of New York City. This city did have a public school class for William and he, like the other students in that class, traveled by school bus to its location. But, other than the provision of a public school classroom for their children, parents had few if any, legal rights.

Whether the school program met any of William's needs cannot be determined. There was no IEP record. There were no progress reports at all. There was no annual meeting; visits to the classroom were not allowed. Phone calls and questions to the school received no reply. When a visit to William's classroom was requested by his mother, it was denied. There were no due process rights. When William's mother persisted, she was told she was a hostile parent and if she did not like the program, she could take her son elsewhere. A transfer to the school where William's mother was teaching was finally arranged, but only after she agreed to assume all responsibilities for his transportation. When William's mother looks at the parental rights and involvement now guaranteed by special education legislation, she truly feels that special education has come a long way indeed.

Joseph's story. "I'm famous," says Joe who is very proud of his bookmark business. Joe is 27 years old now, is multiple disabled, and creates bookmarks with his father, which he gives to the local library for distribution. On the back of each bookmark he stamps "Artwork created by Joseph Ripley."

Joe always considered himself an artist, always had a room full of art supplies at home, and has always produced some kind of art. When he was in elementary school he would collect all the empty bottles around the house and decoupage them with pieces of colored paper or cut up magazines. He came up with his own

process of covering each with a thin coat of Elmer's™ glue which gave them an interesting patina and made them water proof so they could be used as vases. In high school he got into designing and illustrating placemats and covering them with clear contact paper so they could be wiped off after meals.

Although Joe's opportunities for art education were limited, Joe demonstrates a creative use of color. He has an innate sense of design. Some of his teachers in elementary school did provide art opportunities in their classrooms. When Joe was in middle school, he was involved in school plays and he liked that, but, although he was interested in art, he didn't take art. Joe's school was one of many that did not include students with mental retardation in art programs. In high school, there were only art courses that would have been too advanced for him. The teachers were not skilled in or particularly interested in inclusion. Joe could have signed up for a class, but he was well aware when he was not as good as other students, and the expertise to provide the support and encouragement he needed was not available.

During high school, Joe took music classes, played the trombone a bit, helped the band teacher file music, and assisted at concerts. He was very pleased to be involved with the band. Through Joe's involvement, his high school music teacher became interested in the inclusion of students like Joe in the music program and got involved in a one-year Very Special Arts program that focused on inclusion. That was a banner year for Joe, a year in which the school brought in an art teacher experienced with students with mental retardation. It was a year in which all the typical students and special education students worked together. They developed a mural of friendship which they presented to the Kennedy Center along with a choral arts program that Joe introduced. One song was composed by the high school music teacher to celebrate diversity and inclusion.

When the VSA grant ended, so did the art program for Joe. He, however, continued with the music and he certainly has an ear for it. Although he is not a great artist and he cannot really play the trombone, he can hear each instrument in the orchestra, and he enjoys listening to an eclectic collection of CDs ranging from orchestral, to jazz, to choral, to rock and roll. He participated in orchestras both in high school and afterward, as a volunteer with a local community orchestra.

The arts are an important and very successful way to reach and teach Joe and for him to reach back. He loves music, the visual arts, and the freedom of expression that comes with an alternative means of communication. Joe's language and articulation skills, however, are weak. Most people have difficulty understanding him, so they often just don't talk to him. Who knows how much more Joe could

have accomplished in school if teachers had used art as a means of instruction and a way to build Joe's sense of his own worth and abilities? His teachers hadn't yet experienced the spark of excitement and learning that students like Joe can show, nor did they know how to ignite such a spark. What a loss for Joe and his classmates. Still, Joe struggles with social acceptance and has low self-esteem. For Joe, consistent and effective infusing of art into his elementary and secondary education could have made a real difference, a difference in his academic instruction and his sense of self. It could have made a difference for others, too. Joe was part of an education system which served many youngsters, both with and without disabilities. There is a lesson in this for everyone.

Today when Joe introduces himself, he says, "I am an artist." When he walks around town people stop, smile, and say, "You're the guy who makes the bookmarks," and then, Joe knows he really is famous.

Summary

Despite the monumental efforts of disability and child advocates to get disability rights laws enacted, it is evident that individual teachers, families and communities must continue advocating for students with disabilities. For example, in 2002 it was reported that students with disabilities dropped out of high school at twice the rate of students without disabilities and their higher education enrollment was 50% less than the general population (President's Commission on Special Education, 2002). Students with disabilities need individual opportunities to develop into fulfilled, contributing citizens. One by one, it is up to us as individuals to continue to weave their strengths into the fabric of our society.

Art educators have a crucial role to play in ensuring that the goals of our society for students with disabilities reach into each art class and touch every child with disabilities. Legislation has stressed high expectations for students with disabilities. It dramatizes the critical importance of student access to the general curriculum and appropriate accommodations on state-wide tests. The pivotal role of the Individual Education Program (IEP) as an individualized guide to academic, functional and social goals, as well as to the accommodations needed by students to demonstrate their achievement more accurately, is also important. Art educators can offer to participate in IEP development, but most importantly, they can review the IEPs for each of their students with disabilities. Whether a student is in a studio or academic class, the IEP is an excellent tool for meeting the needs of each individual student with disabilities. With and through our knowledge of the arts, art teachers can be unique and vital catalysts and mentors for positive student growth.