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**Advancing the Rights of Persons with Disabilities:
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The New World of Inclusive Education: A Review of the Convention on the Rights of Persons with Disabilities and the American Experience

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Introduction

Children with disabilities throughout the world are often marginalized and excluded from mainstream society. In many countries, children with disabilities are sent away to institutions where they receive no education and are isolated from society for their entire lives. In other countries, children with disabilities are forced to attend separate schools instead of general schools in the community. The vast barriers children with disabilities face in accessing education in most societies has led to a low employment rate for persons with disabilities and a disproportionately high rate of poverty. The Convention on the Rights of Persons with Disabilities (CRPD) addresses these issues and specifically outlines the right to education for persons with disabilities. This paper will discuss the CRPD's inclusive education provision and the benefits of inclusive education, and then will review the special education laws in the United States to provide lessons learned from the American experience.

The right to inclusive education

Article 24 of the CRPD employs the concept of “inclusive” education for the first time in international law and sets out an important obligation for States Parties to ensure education programs are inclusive of persons with disabilities. In particular, Article 24 states:

[1] States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c) Enabling persons with disabilities to participate effectively in a free society.

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[2] In realizing this right, States Parties shall ensure that:

- a) 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;
- b) Persons with disabilities can access an INCLUSIVE (emphasis added), quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) Reasonable accommodation of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion (CRPD, 2006).

The obligation of inclusive education is unfamiliar to many international law and education experts alike, and thus it is important to review further.

The benefits of inclusive education

The CRPD requires States Parties to implement inclusive education systems that ensure reasonable accommodations for children with disabilities. Inclusive education promotes the education of children with disabilities in general education programs. Research suggests all children benefit from inclusive education programs, and therefore every child is better afforded their essential right to education. Inclusive education benefits communities, families, teachers, and students by providing knowledge and understanding of disability related issues. Inclusive education ensures children with disabilities attend school with their peers and teaches them life skills (CRS Vietnam, 2008). Communities also benefit from inclusive schools by gaining more knowledge and understanding about disabilities. The inclusion of children with disabilities in general schools introduces children with disabilities into the local communities and neighborhoods and helps to break down barriers and prejudice. Communities become more accepting of differences, and everyone benefits from a friendlier, open environment (CRS Vietnam, 2008). Schools benefit from inclusive education programs as well.

The concept of inclusive education focuses on each individual child's ability to learn rather than treating all the children the same. Teachers are able to instruct each child in a more individualized way. All children, with and without disabilities, benefit from a teaching style catered to their individual way of learning. Inclusive education also features different teaching techniques such as drawing, singing, and participatory activities. Studies suggest young children retain more information when they are "involved" in learning rather than just lectured at by teachers. Inclusive education also allows teachers to become more dynamic in the classroom, and thus makes school more enjoyable for children and teachers (CRS Vietnam, 2008).

The United States model of including children with disabilities in education

The United States offers an interesting case study to conceptualize the definition of inclusive education as outlined in the CRPD. The United States has implemented “special education” laws and policies that protect the rights of students with disabilities to attend public schools for over thirty years. Although the United States has a long history of educating children with disabilities in comparison to many other countries, the United States still has not created an inclusive education system. The CRPD is thus an important tool to guide the development of a fully inclusive education system in the United States. In addition to reviewing the American experience to better understand the CRPD’s call for inclusive education, the American experience also serves as a useful lens for other countries to review and consider lessons learned as they work to develop and implement inclusive education systems in accordance with international law. A basic understanding of the development of the American system, as well as the inherent shortcomings in the system, may assist other countries to create comprehensive inclusive education systems that do not lead to the same issues that exist in the American system.

Brief overview of American laws and policies for educating children with disabilities

In its 1954 landmark decision, *Brown v. Board of Education of Topeka*, the United States Supreme Court found that “[s]eparate but equal is inherently unequal in the context of public education.” (Brown, 1954). Although the facts in *Brown* dealt with racial segregation in public schools, the Court’s interpretation of the Constitution serves as the legal foundation for the rights of children with disabilities to attend public schools with their peers in the United States. Almost 20 years after *Brown*, two class action complaints invoked the *Brown* decision to bring successful Constitutional challenges of state and local laws that denied children with disabilities the opportunity to attend public schools (PARC, 1971; Mills, 1972).

In follow up to these cases, Congress enacted the Education for All Handicapped Children Act (EHA) in 1975, which has subsequently been renamed the Individuals with Disabilities Education Act (IDEA). IDEA requires public schools to provide qualified students with disabilities a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE). The LRE requires school districts to educate students with disabilities in the regular classroom with appropriate supports to the maximum extent possible. School districts must work with parents and children to develop an individualized education plan (IEP) that details appropriate supports and aids for children with disabilities. The adoption and implementation of IDEA marks an important step towards educating all children with disabilities in the United States, but there is still a great deal of progress to be made before the phrase “separate but equal” is fully removed and replaced with a phrase supporting an inclusive education system in American schools that is equal for all children.

Mainstream education in the United States

To truly understand the meaning of inclusive education in the United States, it is important to distinguish the difference between “inclusive” education and “mainstream” education. Mainstream education is merely placing children with disabilities in the general classroom with their peers as opposed to putting them in a special classroom for the day, or sending them to a separate school for children with disabilities (Ferguson, 1995). Although mainstream education is an improvement to older segregation models of educating children with disabilities, or worse not educating children with disabilities at all, it does not traditionally provide students with the supports they need to succeed in the general classroom. Instead, many mainstream education systems in the United States allow students to be “pulled out” at various times throughout the day so they can receive the supports they need in particular subjects such as math or reading.

The option to pull out students is problematic as it continues to segregate children with disabilities from their peers for varying periods of time and for an array of reasons. Students with disabilities are often pulled out of the mainstream classroom for strikingly inappropriate reasons such as learning how to use a pencil eraser. Further, many students with disabilities still spend most, if not all, of the day in segregated special classrooms working on basic skills. The IDEA requires students to be educated in the “least restrictive environment” and this gives school districts the option to place children in segregated classrooms if that is found to be the best option. The existence of segregated classrooms is problematic and does not effectively fit into a mainstream education model because simply placing child with a disability in the same building as other children is not mainstreaming. Further, segregated classrooms represent an unfortunate step in the wrong direction for developing inclusive education systems.

Inclusive education in the United States

Inclusive education, by comparison, places students with disabilities in the general classroom to learn with their peers and provides adequate supports for students to participate and learn in the general classroom. The resources and supports that have typically been found in resource rooms or special education classrooms are available in the general classroom. For example, if a child who is blind is learning to read Braille in school, the Braille teacher would be placed in the general classroom to teach the child. To further illustrate, if a child with a learning disability needs extra support in math the resource teacher who used to provide support in a separate room now is in the general classroom working with that child and the other children. This helps all children learn as it provides for more teacher support to be in the general classroom.

The concept of providing appropriate supports in the classroom as opposed to pulling out children to work on certain skills outside the classroom is often hard for Americans to grasp. In American schools, many children who do not have disabilities are pulled out of elementary classrooms to work on certain skills such as reading or writing, and thus American society does not see the problem with pulling children out of the general classroom to further develop certain skills. This lack of understanding is a product of an outdated American philosophy as it is problematic to remove one or two young children from the

general classroom to go learn in a separate room whether or not they have disabilities. It is not an inclusive learning environment if a teacher asks a student to leave his/her peers to go work on some skill they can work on in a collaborative manner with their peers in the classroom. Children mimic each other and learn from each other and all children learn at different levels and speeds.

For true inclusion to work, society must understand these differences are real and part of human experience—and that it is not productive to remove children from a positive learning environment. As for developing a student's self-esteem, no one likes to feel "different" from their peers and standing up in the middle of the classroom to head down the hall does not help any student gain confidence and in many cases it does not help the student further develop their academic or social skills. The feeling of being made fun of when a child leaves the classroom does not promote a positive, inclusive atmosphere to learn in, but rather it impacts a child's self esteem and self worth. The most successful inclusive education models in the United States have been implemented from the top down. If the school principal advances inclusive education in his or her school, teachers and staff are much more likely to implement inclusive strategies. School authorities who understand the concept of inclusion can provide a better education for all students.

Framing the legal issues for students with disabilities in the United States

Society's awareness and understanding about inclusive education is necessary to implement a good education framework, but the framework itself is structured by education law. This section reviews the legal issues under IDEA to illustrate why the United States does not have an inclusive legal framework in line with the CRPD. Notably, IDEA articulates the importance of reviewing each student on an individual basis in the same manner as called for by the CRPD. However, as the following discussion points out, issues have arisen and been fleshed out over the years in the American implementation of individual student review under the IDEA. These issues can provide important guidance to other countries as they develop inclusive education systems focusing on individual student needs.

One major issue to consider is that IDEA allows for children with disabilities to receive a Free Appropriate Public Education (FAPE) in general schools, but what constitutes an "appropriate" education is unclear. This question has been heavily debated in the United States. When a child is receiving average marks in school and progressing from grade to grade, does that constitute an "appropriate" education, or should a child with a disability receive every accommodation necessary to reach their full potential?

A parallel issue that arises under IDEA is the question of who qualifies under the law. The law names certain disability groups that may be eligible for the law's protections if the child is otherwise qualified. The concept of "otherwise qualified" presents an issue for children who have one of the listed disabilities but receive passing marks in school. In one instance, a child with autism was not considered "otherwise qualified" despite the fact the child needed certain educational services to succeed in school. The particular child tested very well, but refused to do homework or in class assignments. Because of his high test marks the school district refused to provide an individualized education plan (IEP) for him, and thus he was not entitled to the protections and remedies afforded under IDEA. The school psychologist

who evaluated him noted that one-on-one attention would greatly benefit him in school, but did not recommend an IEP. The child recently started to fail courses due to his lack of homework completion, and now the school must pay for the child to be evaluated by an independent evaluator. If IDEA was interpreted with a more inclusive education lens, the law would ensure all children with disabilities are provided the reasonable accommodations they need to not only get by in school, but to succeed both academically and socially.

There are also clear limitations built into IDEA's enforcement mechanism. IDEA does not have any complaint mechanism allowing for systemic change, and the only means of redress is on an individual basis. This means if two or more children have the same grievance, there is no means to address the grievances collectively through a class action complaint. This is an interesting omission to consider, as the two cases that were catalysts for the law were both class action complaints alleging violations under the United States Constitution. When Congress drafted IDEA it provided for individual procedures and processes within the law, but this has led to disparity of services among students with disabilities for reasons Congress did not envision. Cases are reviewed on a case-by-case basis, which in theory makes sense, but in practice has serious shortcomings. For example, children who are blind in the United States often receive their books in accessible format weeks after school has started, and thus they are behind their classmates. While there have been numerous individual challenges to account for the disparity of services, it remains a major problem throughout the United States and there is no way to challenge this issue holistically under IDEA. The lack of systemic change makes it difficult to quickly transition from the current American education system to a more inclusive education system that provides all children with the accommodations they need to succeed in the general classroom with their peers.

Conclusion

The CRPD has stimulated an important discussion throughout the world about inclusive education for children with disabilities. There is no best practice model of inclusive education and there are many countries that have never educated children with disabilities, so there is a great deal of progress to be made in fulfilling the obligation of inclusive education for children with disabilities. The United States has long been a leader in providing children with disabilities a public education. The American legal system and practical experience have much to offer the world as the inclusive education discussion continues.

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