

## The Influence of the Language of Courts on Educational Opportunities for Students with Disabilities

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### Abstract

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### Recommended Citation

Cormier, K. (2020). Opportunity for whom? The influence of the language of courts on educational opportunities for students with disabilities. *Journal of Critical Thought and Praxis* 10(1), Article 4. <https://doi.org/10.31274/jctp.11608>

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## **The Influence of the Language of Courts on Educational Opportunities for Students with Disabilities**

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**Keywords:** Disability | free appropriate public education | discourse analysis

The history of education for students with disabilities is a long story of injustice. It can be conceptualized through the image of a pendulum swinging between nature and nurture (Spaulding & Pratt, 2015), which swings between the belief that disability and intelligence are fixed concepts versus the belief that people with disabilities can be educated and live full lives. Special education, as mandated by the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, has helped to secure the pendulum on the side of nurture, working to secure the right to an education for all people. The current special education system lends itself to viewing education as an egalitarian system that “focuses on the quality of educational opportunity and the potential of education to create opportunities for individuals and sees education as the great equalizer” (Zion & Blanchett, 2017, p.70). The institution of special education was born out of several federal court cases, and is heavily guided by one of IDEA’s six procedural safeguards, that of free appropriate public education (FAPE). This safeguard is comprised of a public education provided at public expense, that is, at no cost to individuals and families, from the age of 3 to 21 and implemented through an individualized education program (IEP) in accordance with the state educational agency’s standards (IDEA, 2004).

Prior to IDEA (2004) and FAPE, quality educational opportunities for people with disabilities were not commonplace. Nineteenth century reformists like Thomas Hopkins Gallaudet and Dorothea Dix promoted the education of people with disabilities. They felt that by nurturing through training and teaching, individuals with disabilities could learn and become productive members of society who could live a meaningful life (Spaulding & Pratt, 2015). This cause gained momentum and resulted in the opening of several specialized schools along with emphasizing vocational training at institutions. However, this progress was halted with the onset of the Industrial Revolution and the eugenics movement of the early twentieth century, which swung the pendulum back toward the notion of nature and fixed intelligence (Spaulding & Pratt, 2015).

The Industrial Revolution cemented the concept of “normalcy” in society, which is often juxtaposed with disability. Davis (2018) explained that the word “normal” indicates a standard way of “being, looking, working, and doing” (p. 12), and being labeled as disabled indicates that a person has a trait that deviates from this standard of being, positioning disability as different

and “abnormal.” Tracing the roots of normalcy shows that its dominance came around the same time as industrialization (Davis, 2002). Factory jobs were designed for an average body, which came to represent the average citizen, further stigmatizing disability (Davis, 2002). The paradigm of average bodies led to the exclusion of people whose bodies did not fit with the concept of normalcy and the creation of the “other”.

The concept of otherness applied to all disabilities - physical, mental, and sensory - and were deemed undesirable through the theory of Social Darwinism, which gained popularity and fed into the eugenics movement of the twentieth century. Social Darwinism believed in survival of the fittest, while eugenics promoted the eradication of undesirable traits through human breeding to ensure this survival. People with disabilities were seen as unfit and a threat to society that must be dealt with (Spaulding & Pratt, 2015). The idea of educating people with disabilities was seen as a worthless pursuit since nature created them that way and there was nothing that could be done. This notion held true until the passage of the Education for All Handicapped Children Act of 1975, later becoming IDEA (2004), which established special education as it is now known.

The success, quality, and effectiveness of education for students labeled as disabled<sup>1</sup>, along with the nature and nurture debate, can be traced through both federal and Supreme Court decisions on disability. Thanks to these political structures, students have federally guaranteed access to classrooms. However, what constitutes an appropriate education is what is largely contested in regards to FAPE. The relationship between politics and education in this sense is both helpful and harmful. While decisions in several federal cases permit access to classrooms, the language used in these decisions allow educational institutions to view students from a deficit perspective.

The language in the IDEA (2004) was built from court decisions, and the law calls for labeling students into thirteen federal disability categories, allowing educators to place students into what they determine as the least restrictive environment. Because of these practices, schools are often one of the first sites where individuals encounter oppression due to dis/ability (Dolmage, 2017). Students are labeled and sorted based on their abilities, which are often measured using limited, biased, psychological measures. Students who fall on the outer edges of the bell curve are deemed either disabled or gifted, deviating from the norm in both instances. While giftedness is seen as a positive and something to strive for, viewing disability as deviance is a means of disenfranchising and stigmatizing students labeled as disabled (Cosier et al., 2016). Thus, the idea of quality educational opportunities is greatly limited when the opportunity itself becomes a site of stigma.

By tracing the discourse in five federal court cases regarding disability and education, this paper seeks to understand how the language used in federal court decisions influences the quality of educational opportunities for students of diverse abilities by working from a disability studies lens. Scholars in the field of disability studies view disability from the social model - disability is socially constructed and it is environmental, social, and political barriers that “dis”able a person. They push back against the more traditional medical and charity models, which view disability as either a problem to be fixed or cured, or as a personal tragedy in need of pity (Goodley, 2017).

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<sup>1</sup> I intentionally write “students labeled as disabled” to purposefully recognize the social constructions of dis/ability. Throughout this paper all mentions of “students” are specifically referencing students labeled as disabled.

Central to disability studies is how disability is talked about and represented. Access to education for students labeled as disabled was shaped by the rulings in federal cases. The language in these cases was influential in creating special education as we know it, with the rulings outlining the IDEA (2004). In this system we view students labeled as disabled as “special,” but as Linton (2018) pointed out, dictionaries view the idea of special as something that is “surpass[es] what is common...are peculiar to a specific person” (p. 24). Linton further explained that labeling these students “as special can only be understood as a euphemistic formulation, obscuring the reality that neither the children nor the education are considered desirable and that they are not thought to ‘surpass what is common’” (p. 25). For Linton linguistics are key in how we structure and understand disability. Similarly, when discussing the power of language and communication, Dolmage (2018) argued that “rhetoric needs disability studies as a reminder to pay critical and careful attention to diverse bodies” (p. 29). In exploring the language of disability, Dolmage believed we can reexamine the power of language in creating accessible and equitable spaces for people with disabilities. Therefore, by looking at the language of the cases that created the system of special education, we can better understand how the system was built out of a deficit lens that aligns with the medical model. Knowing this will allow us to push back, using the social model of disability to reassess what barriers exist in order to make education a true equalizer.

## Methods

Critical discourse analysis allows us to examine language’s relationship to systems of power and inequality (Rogers, 2011). According to Gee (2014), “the actions we accomplish using language allow us to build or destroy things in the world, things like institutions and marriages” (p. 94). Similarly, Fairclough (2014) stated his purpose of critically analyzing language is to “help increase consciousness of how language contributes to the domination of some people by others, because consciousness is the first step towards emancipation” (p.233). Fairclough argued that the educational system reproduces existing structures in society, along with showing how hidden power held within texts shapes the discourse of the system. By examining the language of federal court decisions related to disability and FAPE we can gain a sense of the ways these decisions impact power and inequality in building and sustaining oppressive educational institutions.

In searching for existing literature in the ERIC platform, the search of “supreme court” and “critical discourse analysis” yielded five results - four regarding rulings on race, and one regarding bilingual education. Searching for “supreme court” and “special education” yielded 225 results. I then expanded the search terms to “supreme court,” “special education,” and “critical discourse analysis” which did not yield any results. Based on these searches, I determined that there was a need to examine the language in the cases that created the system of special education.

Fairclough (2014) pointed out that “a single text is quite insignificant: the effects of media power are cumulative, working through the repetition of particular ways of handling causality and agency, particular ways of positioning the reader, and so forth” (p. 54). Given this need to look at discourse cumulatively over time, five federal cases were selected based on the following criteria: 1) the case influenced disability rhetoric, 2) the case is recognized in the field as creating special education, and 3) the case is recognized in the field as establishing parameters for FAPE. The first, *Buck v. Bell* (1927), established a deficit view of disability at one of the highest levels

of government, allowing disability to be seen as undesirable. The second and third cases, the *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania in 1972* (hereafter *PARC*) and *Mills v. the Board of Education of the District of Columbia* (1972), spoke to the right to equal educational opportunities for students. Both of these cases are seen as foundational in guiding the creation of IDEA (2004). The fourth case, *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982), established a measure for FAPE that was widely applied to hundreds of litigations regarding FAPE (Zirkel, 2013). The last case *Andrew F. vs. Douglas County School District* (2017), demonstrated the ongoing debate regarding what constitutes an appropriate education, with perhaps a new focus of FAPE being appropriate progress (Yell & Bateman, 2017). The decisions in these cases have both built the institution and guide our understanding of special education, along with influencing the ways in which we see students labeled as disabled.

To analyze these cases I relied upon both Dolmage's (2018) and Fairclough's (2014) calls to examine the influence of language on power. Dolmage asserted that "the power of language and discourse centers some things and hides others" (p. 32) and that the language of disability creates ableist barriers. To analyze this power, Fairclough guided us to consider the situational, institutional, and societal power relationships and struggles present in discourse. I analyzed the power struggles in these five cases by looking at the tension between the medical and social models of disability present in the language of the rulings.

To explore this tension, I considered what actions create it. Gee (2014) told us that "anything we say performs some sort of action" (p. 52). As a way of guiding discourse analysis, Gee offered, "for any communication, ask what activity (practice) or activities (practices) this communication is building or enacting," (p. 104). Using this guiding question for analysis, quotes from each case were selected that enable readers and practitioners to either uphold the medical or social models of disability. The quotes were seen as either creating or dismantling barriers for students labeled as disabled. Viewing the language of the courts' decisions and analyzing the activities created from quotes found within them allows us to understand how the politics of these cases influence the figured worlds that exist within schools. These figured worlds speak to the beliefs that educators hold and assume about their world (i.e. schools) that make it normal (Gee, 2014), which impacts the educational opportunities afforded to students within that world.

### **Buck v. Bell, 1927**

In 1927, the United States Supreme Court heard the case of *Buck v. Bell*. The case was a test of the constitutionality of forced sterilization of people deemed undesirable (Cohen, 2016). The case centered around the proposed forced sterilization of Carrie Buck, a woman who was deemed "feeble-minded" and placed in an institution. Buck's mother and daughter were also institutionalized for feeble-mindedness. However, this label was questionable as Buck was forced to leave school in sixth grade to work as a maid for her foster family. It was argued that Buck's rights to due process and equal protection under the law would be violated if she was subjected to forced sterilization. In the delivery of the Court's 8-1 opinion, Chief Justice Oliver Wendell Holmes referred to Buck as a menace and a parent of a "socially inadequate offspring, likewise afflicted," (p. 207) whose sterilization served to benefit the welfare of society. In this case, Holmes famously declared that "three generations of imbeciles are enough" (*Buck v. Bell*, 1927, p. 207). Buck was subsequently sterilized against her will, and the case set a precedent at a

national level that people with disabilities were undesirable, allowing for their segregation in society.

While not directly related to education, this case is important to education as its ruling has never been overturned, allowing the Court's view of people with disabilities to continue to influence subsequent rulings and activities. The language used here by the Court influences deficit views of people labeled as disabled, as Gee (2014) guided us to consider how the language of the ruling "treats other people's identities," (p. 116). Our highest court holds the "feeble-minded" as "socially inadequate," which allows for their marginalization and oppression. It creates the identity of disability as being less-than, and something that is not worth including in society. It situates disability as less-than, and something that is not worth including in society. The ruling states:

that the Commonwealth is supporting in various institutions many defective persons who if now discharged would become a menace but if incapable of procreating might be discharged with safety and become self-supporting with benefit to themselves and to society (*Buck v. Bell*, 1927, p. 206).

The phrase "would become a menace" allows us to view individuals with disabilities as a burden. However, such a burden can be relieved if these individuals become "incapable of procreating." This justifies two actions that are against our nation's ideals: 1) removing an individual's personal freedom to choose to have children, stripping them of their power, and 2) promoting eugenics in that some people are not fit to have children. This is further emphasized:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind (*Buck v. Bell*, 1927, p. 207).

The idea that forced sterilizations are "better for all the world" relocates this as a global problem and recognizes that there are only three possible outcomes for dealing with such individuals - execution, starvation, or prevention. The language here further allows us to see people with disabilities as separate from "normal" individuals by saying they are "unfit from continuing their kind." This distinguishes them as different and deviant in that they should not be allowed to procreate. Later the court quantifies that "three generations of imbeciles are enough," (p. 207) making disability an undesirable identity that does not need to continue. Because special education was born from litigation, the unchallenged ruling and activity of declaring a person socially inadequate enables the justice system to maintain a deficit view of disability.

These views on disability identities are transferred and reinforced by permitting special education systems to uphold the medical model. While feeble-minded is not a federally recognized category, intellectual disability is and 418,540 students were labeled as intellectually disabled in 2016 (National Council on Disability, 2018). The system requires us to label students in order to provide them services, but in doing so we label them as less-than or undesirable. The activity of labeling instantly allows us to create separate spaces in schools. Building these segregated settings limits the ability of education to act as a great equalizer (Zion & Blanchett, 2017). The language of *Buck v. Bell* (1927) constructs activities that limit and marginalize disability, filtering into restricted educational opportunities.

### **PARC vs. Commonwealth of Pennsylvania, 1972**

*PARC* (1972) specifically addressed the exclusion of students who were deemed educable mentally retarded, now known as intellectual disability under IDEA (2004). The case was argued

around four state statutes that the plaintiffs felt the State Board of Education used to avoid and exclude students with intellectual disabilities from public schools:

- The first statute relieved the state from educating children classified as uneducable and untrainable by a psychologist;
- The second statute placed the responsibility of caring for these children on the Department of Welfare which played no role in education;
- The third and fourth statutes allowed for students with intellectual disabilities to postpone or be excused from compulsory education if they had not reached the mental age of five (*Pennsylvania Association for Retarded Children*, 1972, p. 283).

The plaintiffs felt that the third statute made it possible to “forgive *parents* from any criminal penalty” (*Pennsylvania Association for Retarded Children*, 1972, p. 284) for not enrolling their child in school, and argued that all of the statutes were in clear violation of students’ rights to due process. Evidence cited in the case from a 1965 state report estimated 70,000 to 80,000 students who were classified as educable mentally retarded were denied any form of education, whether in public schools, homes, or institutions (*Pennsylvania Association for Retarded Children*, 1972).

The argument was successfully made in *PARC* (1972) that such an exclusion was a denial of the rights of students with intellectual disabilities. Expert testimony spoke to the extent the beliefs of the eugenic movement had on the treatment of individuals with intellectual disabilities. Such testimony also implicated the school as the point of first contact with “the mentally-retarded label and concomitant stigmatization upon children” (p. 295) and shared that 25% of students may be mislabeled. The agreement reached between the parties was said to be “a noble and humanitarian end,”(p. 302).

While this case laid the foundations for IDEA (2004) and FAPE, it brings forth some troubling notions and activities that persist today. The language of “educable mentally retarded” implies that a distinction can be made between individuals who are simply mentally retarded and those that can be educated. This label implemented at both the state and federal level indicates that the government distinguishes between the two, suggesting some people cannot be educated. The idea that students could be “classified as uneducable” speaks to the ways we continue to sort students based on ability. Regulating students in terms of their perceived ability to learn grants educators enormous power over the trajectory of a child’s life. Further, educators are not trained to determine a child’s “mental age,” and doing so can be limiting and subjective. For example, in the 1970s the IQ cut off for what was formerly known as mental retardation went from 85 down to 70, “thus, in one day, a group of individuals with IQs between 71 and 85 went from being ‘mentally retarded’ to no longer mentally retarded” (Cosier, 2016, p. 303). Cosier relied upon this history of classification in teacher professional development sessions to show how this classification is socially constructed. This discrepancy makes the label used in *PARC* (1972) even more limiting. While there is a need to determine skill levels to better serve students, the act of classification makes us sound more like scientists than teachers.

Similarly, the *PARC* (1972) ruling also shed light on the activity of “excusing” students from school. This activity directly contradicts the egalitarian aims of education. Education cannot become an equalizer if students are excused and excluded on the basis of ability. While the ruling overturns the notion of excusing a child from mandatory schooling, students continue to be “excused” from activities their same-age peers participate in by being placed in self-contained classrooms or opting out of standardized tests.

This discourse also recognizes the ways in which schools create stigma, with the expert testimony referenced in the decision directly citing schools as the first to provide labels and stigmatization. Schools are identified as creators of stigmatized identities. The ruling concludes that including students labeled as educable mentally retarded in schools is a “noble and humanitarian end,” suggesting that simply letting the students in schools is enough as the ruling did not address what such an education would entail. The “noble and humanitarian end” makes it so that schools can be saviors by letting students into their schools, in line with the charity model of disability which views disability as something to pity. But it does not allow the schools to grapple with being enablers of stigma or their roles in oppression based on ability since they are seen as “noble and humanitarian.” Being seen as noble allows school systems to maintain power over who can be educated in their schools. If the purpose of schools is to ensure quality opportunities and to be a great equalizer, then schools must address this. In *PARC* (1972) the courts recognize the creation of stigma in schools but did not address ways to remedy this.

### **Mills vs. the Board of Education of the District of Columbia, 1972**

Similar to *PARC*, *Mills vs. The Board of Education of the District of Columbia* (1972) used the precedent of denial of due process established in *Brown v. Board of Education of Topeka, Kansas* (1954) to argue for the inclusion of students with disabilities in public education. The case was brought forward on behalf of seven children who were deemed “exceptional” children and were all denied a public education without due process hearings (*Mills*, 1972). As seen in the history leading to special education, educators felt that these children could not make progress and public schools were not an appropriate setting for them. The Board of Education of the District of Columbia argued that there were insufficient funds available to properly provide an education. The court declared this cannot be used as an excuse and the Board “shall not exclude any child resident of the District of Columbia from such publicly-supported education on the basis of a claim of insufficient resources” (p. 878) The court also stated that inadequacies due to “insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the ‘exceptional’ or handicapped child than on the normal child” (p. 876).

The recommendations by the United States District Court became the outline for IDEA (2004), with the court mandating that the Board of Education had “the responsibility for implementation of the judgement and decree of this Court in this case” (p. 876). Perhaps the most crucial component of this case was the right to a free and appropriate public education that the children in *Mills vs. The Board of Education of the District of Columbia* (1972) were so blatantly denied. The court used its power to ensure access to education for all students.

By placing “the responsibility for implementation of the judgement” on the school board the court built the relationship between politics and schools even more, establishing the court as a means for securing students’ rights to education through due process. The court’s activity in dismissing “insufficient funding or administrative inefficiency” breaks apart the Board of Education’s norm of refusing to educate certain students, and instead the court mandated they take responsibility in ensuring an education for all students. If a school felt a child could not learn in a general setting, the court required them to establish a procedure for determining, finding, and ensuring a proper placement. The courts established that no student can be denied their right to due process regardless of perceived ability. The court’s activities in this case were a step closer to fulfilling the egalitarian purpose of schools by compelling all “publicly supported” schools to educate all students.



The courts also recognized “exceptional or handicapped” children as equally important as their “normal” peers, focusing on their identity as students rather than disabled. By dismissing the exclusion of these students, the court mandated schools become more inclusive, pushing schools to fulfill their purpose of providing quality education to all. This was a step towards embracing the social model by recognizing that schools were acting as a barrier by refusing to educate students with diverse abilities. With the establishment of free appropriate public education by *Mills vs. The Board of Education of the District of Columbia* (1972) and *PARC* (1972), the challenge for courts and schools was to determine what is considered an appropriate education.

### **Board of Education of Hendrick Hudson Central School District v. Rowley, 1982**

In *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982), the United States Supreme Court heard its first case pertaining to special education, and it was significant in that it set the standard for FAPE. The case was brought on behalf of Amy Rowley by her parents who wanted their daughter to have a sign language interpreter in her classes to provide further support beyond her use of a hearing aid. While she was making progress, they felt “she understands considerably less of what goes on in class than she could if she were not deaf” (*Board of Education of Hendrick Hudson Central School District v. Rowley*, 1982, p. 186). In their 6-3 ruling, the U.S. Supreme Court supported the school district’s decision to not provide an interpreter. The Court argued “the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside” (p. 192). The Court assessed if it was the duty of schools to provide equal opportunities based upon the wording of the Education for All Handicapped Children Act of 1975, determining that “the requirements that States provide ‘equal’ educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons,” (p. 199) and instead ruling the requirement is “that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child” (*Board of Education of Hendrick Hudson Central School District v. Rowley*, 1982, p. 201). A two-pronged test to determine if a FAPE was provided was established in the ruling, setting a precedent as the standard measurement of FAPE.

The Supreme Court established the precedent that an appropriate education did not necessarily equate to equal educational opportunities, challenging the egalitarian aims of schools. According to the Court, providing equal opportunities required the “unworkable standard” of measuring and comparing students of varying unique abilities. The Court’s description of equal opportunities being an “unworkable standard” is unsettling in that it suggests there cannot be equal opportunities between disabled and nondisabled students. Rather the Court stated that “some educational benefit” is enough, but begs the question of whether some benefit would be deemed acceptable for a nondisabled student. This sets a norm of different educational expectations for students based on ability. This language allows schools to view students as progressing even if they are only receiving some benefit, while still viewing them as less than equal to their nondisabled peers as they do not have to be held to the same standards.

Despite recognizing the diversity of a student body, the Court still upheld the notion that such diversity prohibits equal opportunity. Viewing this decision from the social model of disability, we can see that this ruling sets up a barrier for students in that it denies equal

educational opportunities. The Court’s discourse in this case ensured access while limiting equal opportunities and enabling students to still be seen in a deficit-light by educational institutions.

### **Andrew F. vs. Douglas County School District, 2017**

Nearly 35 years after *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982), the case of *Andrew F. vs. Douglas County School District* (2017) was heard before the U. S. Supreme Court. Through *Andrew F. vs. Douglas County School District*, the Court was able to rectify its shortcomings in its *Rowley* decision. The case was brought on behalf of Andrew F., a student with autism, by his parents who felt he was making minimal progress with his IEP. The school district made little changes to his IEP between fourth and fifth grades, even after his parents expressed their disapproval. After enrolling him in a private school where he did make significant progress, his parents returned to the Douglas County School District and requested a new IEP. The district refused to make any changes, and so his parents felt he was denied a FAPE.

The Supreme Court unanimously sided with Andrew F.’s parents in that he was denied access to FAPE. The ruling was deemed significant in that the justices argued that:

When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly...awaiting a time when they were old enough to drop out.’ The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances, (*Andrew F. vs. Douglas County School District*, 2017, p. 1001).

Acknowledging that students were “offered an education program providing merely more than *de minimis* progress” recognized that existing barriers of low expectations are preventing students from reaching their full potential. This suggests that students should be expected to do more, and schools should offer a more rigorous educational program.

Whereas in *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) the Court did not require equal educational opportunity, with *Andrew F. vs. Douglas County School District* (2017) the Court recognized that every child should have the opportunity to meet challenging objectives, while also acknowledging the limitations of IDEA (2004) and the uniqueness of diverse abilities, stating the “IDEA cannot and does not promise ‘any particular [educational] outcome.’ No law could do that - for any child,” (*Andrew F. vs. Douglas County School District*, 2017, p. 998). This implies that the law cannot ensure equal education, and the Court further declined to specify appropriateness, stating “We will not attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” but emphasized the need for schools to develop IEPs that meet the unique needs for each child in conjunction with the wishes and opinions of the child’s parents (*Andrew F. vs. Douglas County School District*, 2017, p. 1001).

The language here builds the expectation of honoring a student’s unique needs while ensuring they do more than “sitting idly...awaiting a time when they were old enough to drop out” The Court recognized how given the lack of clarity on what is considered an “appropriate” public education some students were subjected to “instruction that aims so low,” they hardly received an education. Such an education is in line with the medical model, in that students have little potential to achieve more. This challenges the norm of low expectations for students labeled

disabled that was upheld by the Douglas County School District (and arguably in many others). By acknowledging each child's unique circumstances, the Court promotes the notion found in IDEA (2004) of an *individualized* education plan that is tailored to each child's needs to ensure appropriate progress. This pushed educational institutions to hopefully provide a better quality education.

In declining to define "appropriate" the Court refused to take on the role as an authority on educational opportunity. The Court maintained its role as a judicial body and recognized this prohibits them from determining precisely what ensures a quality education. They do assert that a "*de minimis*" education is not an education at all, and recognize that students deserve more. This aligns with the social model of disability in that it recognizes such low expectations prohibit student achievement and limits the quality of education.

### Discussion

The history of special education from a historical and legal perspective has seen the pendulum swing back and forth between nature and nurture. These five cases echo the swing of the pendulum in their rulings and the figured worlds among schools built through the activities and identities enabled by the rulings. Early reformers insisted individuals with disabilities can and should be educated, with their work being halted by eugenics. The horrors of institutionalization and the obscene comments by the Supreme Court in *Buck* need to be meaningfully reflected on by educators in order to properly situate their practice in the realm of democracy and human rights. While we may no longer openly say students labeled as disabled are socially inadequate, this notion is reinforced by the Supreme Court stating true equality of educational opportunities is an "unworkable standard," (*Board of Education of Hendrick Hudson Central School District v. Rowley*, 1982, p. 199). *Buck v. Bell* (1927) and *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) saw the pendulum swing negatively toward the concept of fixed intelligence.

Yet, in *PARC* (1972) and *Mills vs. the Board of Education of the District of Columbia* (1972) we see a more egalitarian approach to education in the creation of free appropriate public education, with the pendulum swinging toward a more nurturing figured world. FAPE goes beyond classroom structures and practices, serving as a medium to help individuals exercise their rights to acquire the means to live a valuable, worthwhile life. *Andrew F. vs. Douglas County School District* (2017) has many special education advocates hopeful for a higher standard for FAPE. However, since the Supreme Court refused to address more specifically what "appropriate" meant, the full implications have yet to be seen, with perhaps a new focus of FAPE being appropriate progress (Yell & Bateman, 2017). We must determine whether appropriate progress denotes equal opportunities.

The battle for equal educational opportunities and FAPE were (and are) arduously fought by individuals with disabilities, their parents, and advocates, and through several key pieces of litigation the right to an education was established as law. All individuals, regardless of ability, have access to a free public education. The struggle is now to navigate the ambiguity of what an appropriate education means so that the belief of education as a great equalizer can be realized. The term "appropriate" offers flexibility for services to be tailored to an individual's needs, but the term also lends itself to wide interpretation by the various parties involved in crafting an IEP. If we are only guided by the notion of a "*de minimis*" education being insufficient, how are we to achieve equal opportunities for all students? The prevailing underlying deficit views of ability

that remain in court rulings and schools will most certainly influence the quality of opportunities students have access to. Future iterations of IDEA (2004) must continue to address this area of uncertainty.

The metaphor of special education as a pendulum as offered by Spaulding and Pratt (2015) helps us visualize the struggle of educational rights for individuals with disabilities. With the renewal and revisions to IDEA in 2004, the question arises as to where the pendulum is located. Is the pendulum firmly situated on the side of nurture? Individuals with disabilities have access to classrooms, but not everyone invested in their education is in agreement as to how deep such an education can go. There is debate on teaching basic life skills to some individuals versus actually teaching content, which is evident in *Andrew F. vs. Douglas County School District* (2017). The general physics of a pendulum dictates that the pendulum will eventually stop swinging, settling in the middle of the two extremes. Have we settled in the middle yet? What does the middle of this debate look like? More importantly, is it enough to settle on being the middle of nature and nurture with the quality of human life and equality at stake?

Zion and Blanchett (2017) state an egalitarian view of schooling promotes equal opportunities, but perhaps we need to shift our focus to more equitable opportunities. The rulings here highlight the necessity of considering each student's unique needs, regardless of ability. Centering equity so that all students have access to schools, curricula, and materials will help us nurture the traits a student was born with in order to enable them to reach their full potential. Equity can guide education to become a great equalizer. The language we use in education and politics to address these ideas will outline the educational opportunities we provide. These complex questions carry a magnitude of weight that we have the responsibility to grapple with as we move the work of reformers and the disability rights movement forward.

## Conclusion

When considering the egalitarian aims of education to act as an equalizer it is important to look at the legislation that enables equal access to education for all students. The cases presented here explore how the language of these rulings influence the views of students labeled as disabled and the quality of their educational opportunities.

As Fairclough (2014) asserts, there is a hidden power in this discourse. This power suggests that disability is a deficit and that we cannot provide or measure equal educational opportunities. The ruling in *Buck v. Bell* (1927) implied that disability is undesirable and should be eradicated, with such a view allowing us to feel pity on those who are deemed disabled. Similarly, *PARC* (1972) suggested that including students with disabilities makes us noble and humanitarian, rather than recognizing their exclusion as marginalization and oppression. While *Mills vs. the Board of Education of the District of Columbia* (1972) placed the responsibility on schools to educate all students, *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) decreed that schools only needed to provide some educational benefit. *Andrew F. vs. Douglas County School District* (2017) attempted to remedy this, the ruling only stated that we must provide more than the minimum. When looked at as a whole, these rulings permit us to uphold the charity and medical models of disability in that disability is a problem that needs to be fixed that should be pitied, while we as educators can act as saviors in allowing students to be in our schools. What this discourse does not do is guide us to consider the social model and address the barriers that exist that prevent students from reaching their full academic and

personal potential. We must pick up where the courts have left off, and create a discourse that recognizes our role in limiting every student's right to quality educational opportunities.

While the language of these five cases can influence our views of students labeled as disabled, it is important to acknowledge that they are not the only factor to consider when examining the quality of educational opportunities. There are many other cases that also address issues related to special education, and while analyzing the rulings and subsequent policy decisions, it is also important to address how educators implement these concepts in schools. Rather than expecting the bare minimum of students and providing some benefit, as educators we can strive to provide programs that respect each student's dignity and ability by adopting a strengths-based approach that focuses on what students *can* do rather than what they cannot. We must truly believe and act upon the idea that all students are capable of achievement. The language of these rulings is powerful, and we must be aware of and push back against the deficit views it enables. All students, regardless of ability, bring diverse ways of being and thinking to our classrooms. Therefore, it is up to us as educators to assess what barriers we create in our classrooms that prevent education from truly being a great equalizer.

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