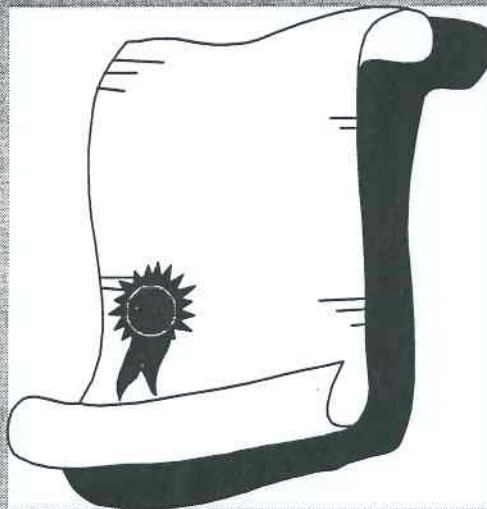


Historical Review of Pennsylvania's



Right to Education Task Force System

1. Constitutional Right To Education:

- The Fourteenth Amendment of the U.S. Constitution, 1868
- Right to Education as Governmental Property Right, 1954 *Brown vs. Board of Education*
- A Landmark Case: *PARC v. Commonwealth of Pennsylvania*, 1971
- *Mills v. D.C. Board of Education*, 1972
- Education for All Handicapped Children Act, 1975



2. Review of *PARC v. Commonwealth of Pennsylvania.*

- Significance of PARC
- Case analysis:
 - The FACTS of PARC
 - The ISSUES of PARC
 - The FINDINGS of PARC
 - The DECISIONS of PARC
 - The RULES established by PARC
- The players in the court case
- The main questions in the court case
- How the court case redefined
“education”

3. Settling the Court Case and Subsequent Developments

- The Order and Due Process Stipulation
- The Consent Agreement
- COMPILE: Commonwealth Plan for Identification, Location, and Evaluation
- COMPET: Commonwealth Plan for Education and Training



Fourteenth Amendment, U.S. Constitution, 1868

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The “Right to Education”

Today, education is perhaps the most important function of state and local governments...In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms. (*Brown v. Board of Education, 1954*)

Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania

The most significant of a series of court cases which in the early 1970s forced courts to answer the question of the "right to education" for individuals with disabilities and stimulated Congress to legislatively address the exclusion of children with disabilities from adequate education and training.

Mills v. D.C. Board of Education

Based on the Fifth Amendment of the Constitution, the court ruled in *Mills v. D.C. Board of Education* (1972) that, “The District of Columbia shall provide to each child of school age a free and suitable publicly-supported education regardless of the degree of the child’s mental, physical or emotional disability or impairment (348 F. Supp. 866, 878).”

Mills v. D.C. Board of Ed. was necessary because D.C. is not covered in 14th amendment. D.C. is not a state.

Fourteenth Amendment, U.S. Constitution, 1868

Brown v. Board of Education, 1954
Right to Education

***PARC v. Commonwealth of
Pennsylvania, 1971***
**Right to education for individuals with
disabilities**

***Mills v. D.C. Board of
Education, 1972***
**Free and suitable public education to
children regardless of level of
disability impairment**

**Series of similar “right to
education cases based on
precedent-setting role
played by PARC**

**Right to Education for All
Handicapped Children Act, 1975**

Significance of PARC:

1. Made right to education meaningful for children with disabilities
2. Stimulated judges and lawmakers in other states to increase the access to public schools for children with disabilities
3. Signaled the “beginning of the end” of discrimination against children with disabilities
4. Formed the basis for later legislation for education of individuals with disabilities.
5. Led to the adoption by Congress of the Education for All Handicapped Children Act of 1975
6. Increased the pressure on Congress to spend more federal money on state public school programs for children with disabilities.

The FACTS of PARC

- Prior to 1971, exclusion of children with mental retardation was based on misinterpretations of four State statutes:
 - 1) **24 Purd.Stat. Sec. 13-1375** was used to relieve the State Board of Education from any obligation to educate a child who was certified as “uneducable and untrainable” by a public school psychologist.
 - 2) **24 Purd.Stat. Sec 13-1304** was used to justify an indefinite delay of admission to school of any child who had not reached a mental age of five years.
 - 3) **24 Purd.Stat. Sec. 13-1330** was used to excuse from compulsory school attendance any child whom a psychologist determined was unable to profit from schooling.
 - 4) **24 Purd.Stat. Sec. 13-1326** which defined compulsory school age as 8 to 17 years was used to delay admission of children with mental retardation until age 8 or to exclude them at age 17.

(Masterson, District Judge, 343 F. Supp. 279)

The FACTS of PARC

- On January 7, 1971, the Pennsylvania Association for Retarded Children (PARC) and thirteen excluded children (through their parents) filed a class action suit against the Commonwealth of Pennsylvania on the behalf of all children with mental retardation between the ages of 6 and 21 who were being excluded from public education and training.

(The PARC Complaint, Civil Action No. 71-42)

- The suit was brought against the Commonwealth of Pennsylvania including the Secretary of Education, the State Board of Education, the Acting Secretary of Public Welfare, and the school districts of the thirteen children and all other school districts statewide.

(The PARC Complaint, Civil Action No. 71-42)

The ISSUES of PARC

The plaintiffs (PARC and the thirteen children) alleged:

- Sections 13-1375 (uneducable and untrainable) and 13-1304 (mental age of 5 years) offended equal protection rights because no rational basis existed for the premise that certain children with mental retardation were uneducable and untrainable.
- Sections 13-1375 (uneducable and untrainable) and 13-1304 (mental age of 5 years) offended due process rights because they did not require that parents be notified and a hearing made available before children were excluded or assigned to different educational settings.

The ISSUES of PARC

- The use of Sections 13-1375 (uneducable and untrainable) and 13-1304 (mental age of 5 years) to exclude children with mental retardation from an education violated their right to education which the U.S. Constitution and the laws of Pennsylvania guaranteed to all children.
- The use of Sections 13-1330 (excusal from compulsory attendance) and 13-1326 (definition of compulsory school age) to not give prior hearing violated due process rights and to exclude children without fact that they would benefit from schooling violated equal protection rights of children with mental retardation. It was complained that the clear intent of these two sections was to excuse *parents* (not the schools) from criminal penalty for choosing not to send to school a child who fit the stipulations of the statute.

(Masterson, District Judge, 343 F. Supp. 279)

Critical issues raised by *PARC*:

- whether or not education can be solely defined as the provision of academic experiences.



- whether or not children with mental retardation have a right to education.



- whether or not children with mental retardation have a right to due process.

The FINDINGS of PARC

The following points were established:

1. Expert testimony in this action indicates that all mentally retarded children are capable of benefiting from a program of education and training.
2. The Commonwealth of Pennsylvania has undertaken to provide a free public education to all of its children between the ages of six and twenty-one years, and, even more specifically, has undertaken to provide education and training for all of its exceptional children.
3. The Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education and training.

The FINDINGS of PARC

4. It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training.

(Consent Agreement, Civil Action No. 71-42, ¶4-7)

The DECISIONS of PARC

On June 18, 1971, Stipulation:

...no child who is mentally retarded or thought to be mentally retarded can be assigned initially (or re-assigned) to either a regular or special educational status, or excluded from a public education without a prior recorded hearing before a special hearing officer.

(Masterton, District Judge, 343 F.Supp. 279)

October 7th, 1971 Consent Agreement:

P5: ...it is the Commonwealth's obligation to place each mentally retarded child in a *free, public program of education and training appropriate to the child's capacity.*"

(Masterton, District Judge, 343 F.Supp. 279)

P47: called for the development of a plan for the identification, location, and evaluation of all children with mental retardation.

P48: called for the development of a plan to commence or recommence a free public program of education and training for all children with mental retardation.

The RULES established by PARC

1. All retarded children are entitled to a free public education.
2. The definition of education is not limited to academic experiences but is seen as a continuous process by which individuals learn to cope and function in their environment.
3. Placement in a regular class is preferable to any special class for these children.
4. Parents are entitled to a hearing before any change in the educational program for their retarded child is made.
5. Postponement or termination of educational programming is prohibited unless a hearing takes place.
6. Retarded children must be re-evaluated on a regular basis.

(Cremins, 1983, p. 17)

The players in the court case

The Plaintiffs:

- *PARC*
- Thirteen mentally retarded children excluded from the public schools: Nancy Beth Bowman, Linda Taub, Charles O'Laughlin, Christopher John Kelly, Mark Moser, William Reese, David Tupi, Sandra Lydard, Emery Thomas, William Weston, Cindy Mae Hatt, Ronald Green, and Glenn Lowrey.

On the Behalf of:

...the class of all persons, residents of Pennsylvania, aged six to twenty-one years, who are eligible for a free public education except that defendants herein (1) have excluded or (2) excused them from attendance at public school or (3) have postponed their admission or (4) otherwise have refused to allow them free access to a public education because they are retarded. (Complaint, Civil Action No. 71-42, 1971, ¶ 7)

The players in the court case

The Defendants

- The Commonwealth of Pennsylvania which, according to the complaint, "...has assumed and has among its primary governmental functions the education of all of Pennsylvania's children (Complaint, Civil Action No. 71-42, ¶5)."

Specifically, the complaint named:

- **David H. Kurtzman**, the Secretary of Education; the State Board of Education
- **Joseph Adlestein**, the Acting Secretary of Public Welfare
- **The thirteen specific school districts** of the children named above. As a class action suit, the complaint also named all other school districts of the Commonwealth.

The players in the court case

The Judges: The case was presented to a three judge panel of the United States District Court for the Eastern District of Pennsylvania

Attorney for the plaintiffs: Thomas K. Gilhool

Attorney for the defendants: The Attorney General, J. Shane Creamer, and Deputy Attorney General, Ed Weintraub.

Court Masters: Since the case was settled by a consent agreement, two Masters were appointed: Master Dennis E. Hagerty, a lawyer who was also a parent of a child with disabilities, and Master Herbert Goldstein, a special education expert.

The main questions in the court case

Specifically, the defendants were accused of “arbitriciously and capriciously” applying (or permitting the application of) four state statutes to “...deny plaintiff retarded children their right to attend public school and to an education...”

It was claimed that the statutes were being used to:

- exclude or excuse children with mental retardation from school;
- postpone their admission to school;
- end their attendance at age seventeen; and
- not provide education for children at State Schools or Hospitals.

(Complaint, Civil Action No. 71-42, ¶29)

The main questions in the court case

More broadly, the case asked three precedent-setting questions:

1. What was the definition of education as it applied to children with mental retardation?
2. Do all children with mental retardation have a right to education?
3. Do children with mental retardation and their parents (or guardians) have a right to due process if the child is excluded from education or his/her assignment is changed?

How the court case redefined “education”

To prove that children with mental retardation were capable of benefit from education and training, Plaintiff Attorney Gilhool lined up expert witnesses who developed three specific conclusions:

1. The provision of systematic education programs...will produce learning.
2. Education cannot be defined solely as the provision of academic experiences to children, it must be seen as a continuous process by which individuals learn to cope and function with their environment....
3. The earlier these children are provided with educational experiences, the greater the amount of learning that can be predicted.

(Cremins, 1983, p. 16)

The significance of the DECISION

The equal protection doctrine which led to a "zero reject" policy which would prevent:

1. The total exclusion of all or some children with disabilities in the schools,
2. The total exclusion of some children with disabilities when others with the same handicap were included, and
3. The total exclusion of all persons with one kind of handicap (such as autism) when persons with different types of handicaps (such as physical disabilities) were included. In each of those instances, the class of persons entitled to equal protection was "students," not just *some* students.

(Turnbull, 1990, p. 32)

The Order and Due Process Stipulation

On June 18, 1971, the court released an Order and Due Process Stipulation stating that “...retarded children cannot be denied access to a free public education without due process of law (Cremins, 1983, p. 16).”

...[T]he parties agreed upon a Stipulation which basically provides that no child who is mentally retarded or thought to be mentally retarded can be assigned initially (or re-assigned) to either a regular or special educational status, or excluded from a public education without a prior recorded hearing before a special hearing officer. At that hearing, parents have the right to representation by counsel, to examine their child's records, to compel the attendance of school officials who may have relevant evidence to offer, to cross-examine witnesses testifying on behalf of school officials and to introduce evidence of their own...

(Masterson, District Judge, 343 F. Supp. 279)

Consent Agreement which settled the court case

On October 7, 1971, the parties submitted a Consent Agreement for approval and Order of the Court settling the case.

- The findings of the case were agreed to in the Consent Agreement.
- In the final Order, Injunction, and Consent Agreement, the defendants were ordered and agreed to stop applying the specified statutes to postpone, to terminate, or in any way deny access to their right to education.
- It was ordered and agreed that the statutes would stop being used to deny tuition, or tuition and maintenance, to any mentally retarded person except on the same terms as may be applied to other exceptional children.
- It was ordered and agreed that the statutes would stop being used to deny homebound instruction to any mentally retarded child merely because no physical disability accompanies the retardation or because retardation is not a short-term disability.

Issues on Discrimination of Children with Disabilities

In order to correct the discrimination against the named thirteen children and the broader class of children with mental retardation, it was further ordered and agreed:

- to immediately re-evaluate the named plaintiffs, and to accord to each of them, as soon as possible but in no event later than October 13, 1971, access to a free public program of education and training appropriate to his learning capacities;
- to provide, as soon as possible but in no event later than September 1, 1972, to every retarded persons between the ages of six and twenty-one years as of the date of this Order and thereafter, access to a free public program of education and training appropriate to his learning capacities;
- to provide, as soon as possible but in no event later than September 1, 1972, wherever defendants provide a pre-school program of education and training for children aged less than six years of age, access to a free public program of education and training appropriate to his learning capacities to every mentally retarded child of same age.

(Order and Injunction, Civil Action No. 71-42, ¶12g-i)

Opinions and Regulations:

Complying with and extending the Due Process Stipulations of the Court's Order of June 18, 1971, the Opinions and Regulations:

- provided for notice and an opportunity for a hearing before a child's admission to school is postponed, assignment or reassignment made;
- required automatic re-evaluation every two years of any educational assignment other than to a regular class;
- provided for an annual re-evaluation at the request of the child's parent or guardian;
- provided for notice and an opportunity for a hearing upon each such re-evaluation.

(Consent Agreement, Civil Action No. 71-42, ¶¶ 12, 40)

COMPILE: Commonwealth Plan for Identification, Location, and Evaluation

Paragraph 47 of the Consent Agreement settling *PARC v. Commonwealth of Pennsylvania* called for the development of a plan for the identification, location, and evaluation of all mentally retarded children (as specified in the agreement):

Within thirty days of the date of this Order, defendants shall formulate and shall submit to the Masters for their approval a satisfactory plan to identify, locate, evaluate and give notice to all the persons described in the foregoing paragraph, and to identify all persons described in Paragraph 44, which plan shall include, but not be limited to, a search of the records of the local school districts, of the intermediate units, of County MH/MR units, of the State Schools and Hospitals, including the waiting lists for admission thereto, and of interim care facilities, and to the extent necessary, publication in newspapers and the use of radio and television in a manner calculated to reach the persons described in the foregoing paragraph. A copy of the proposed plan shall be delivered to counsel for plaintiffs who shall be accorded a right to be heard thereon.

(Consent Agreement, Civil Action 71-42, ¶47)

COMPET: Commonwealth Plan for Education and Training

Paragraph 48 of the Consent Agreement settling *PARC v. Commonwealth of Pennsylvania* called for the development of a plan to commence or recommence a free public program of education and training for all mentally retarded children (as specified in the agreement):

By February 1, 1972, defendants shall formulate and submit to the Masters for their approval a plan, to be effectuated by September 1, 1972, to commence or recommence a free public program of education and training for all mentally retarded persons described in Paragraph 46 above and aged between four and twenty-one years as of the date of this Order, and for all mentally retarded persons of such ages hereafter. The plan shall specify the range of programs of education and training, their kind and number, necessary to provide an appropriate program of education and training to all mentally retarded children, where they shall be conducted, arrangements for their financing, and, if additional teachers are found to be necessary, the plan shall specify recruitment, hiring, and training arrangements. The plan shall specify such additional standards and procedures, including but not limited to those specified in Paragraph 39 above, as may be consistent with this order and necessary to its effectuation. A copy of the proposed plan will be delivered to counsel for plaintiffs who shall be accorded a right to be heard thereon. (Consent Agreement, Civil-Action 71-42, ¶49)

J. The Local Task Force shall remain operative on a continuing basis:

- (1) To assist each school district and County MH and MR Program implement this Plan;
- (2) To assist the State Task Force in developing and implementing the Statewide special education plan as stipulated in Paragraph 50 of the Order;
- (3) To bring to the support and objectives of this Plan all available State, Federal and private funds and resources;
- (4) To collect appropriate and sufficient data toward a Statewide review by the State Task Force;
- (5) To suggest constructive revision, relief or other response to deficits or inadequacies in the implementation of this Plan;
- (6) To initiate, develop and maintain a pattern of constructive interaction between the School District, Intermediate Unit, County MH and MR Program, private human resource agencies and consumer citizens for continued planning, conduct and self-renewal of effective public programs of education and training for all mentally retarded children in the Commonwealth.