

ACCESS TO PUBLIC SCHOOL EDUCATION FOR STUDENTS WITH DISABILITIES: UNITED STATES AND UKRAINE

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Abstract

Although Ukraine and the United States developed their education systems under different contexts and histories, both struggled with providing access to public school education for students with disabilities. This article describes the different paths each country took leading to the development of access to a public school education for students with disabilities. Implications for Ukraine are detailed.

Key words: *Disability education, disability law and policy, access to education, children with disabilities.*

Introduction

Ukraine and the United States developed systems to educate children with disabilities under very different contexts. However, both countries resolved to educate children with disabilities.

Research Aim: The aim of this article is to compare how access to public school education for students with disabilities developed in the United States and Ukraine and to discuss implications for Ukraine.

Importance of Topic: To illustrate two examples of how children with disabilities are educated, consider the following case scenarios, one from Ukraine and one from the United States. Both reflect how these students were educated.

Sergi, Ukraine, 2011

Sergi was a brilliant student who was paraplegic and used a manual wheelchair. He grew up in a rural area outside of a major Ukrainian city. Although he was verbal and bright, he was not allowed to attend public school because he had a physical disability and required a wheelchair. Sergi's mother attempted to enroll him in public school, but school administrators stated that they could not educate a child with a physical disability, primarily because transportation was not available to get him to get to school, the teachers were not trained, and the building was not accessible. Discouraged, Sergi's mother had no recourse

but to provide home-schooling. When he was old enough to exit secondary school, Sergi was not allowed to take the required exit exams. Sergi felt a sense of isolation from other people. It was extremely difficult for him to navigate around his home because of narrow doorways, ridges from one room to the next and steps to exit his home. Some of his family members were embarrassed about his disability.

Anna, United States, 2011

Anna was born with no hands below both elbows. When she was 3 years old, her parents enrolled her in preschool, where she received occupational therapy to help her accommodate for the disability. In elementary school, she was fully included in a classroom with children who did not have disabilities. Anna rode the school bus daily to and from school. Her teacher met annually with a team of professionals, including Anna's mother and the occupational therapist, to individually assess Anna's progress and plan her education for the upcoming year. This team met throughout Anna's school career. A major challenge for Anna was when she received electric "hands" and had to learn how to use them. During this time, Anna received intensive therapy to functionally use the electric hands. When Anna was 18, she graduated from high school with her peers and was accepted to attend the local university.

What are the differences between these two scenarios? Sergi, from Ukraine, was excluded from school and experienced difficulty with mobility, around his home and in the city. Despite his mother's acceptance, other family members were not as accepting of Sergi's disability. Anna, from the United States, was also disabled physically, although her disability did not affect mobility. Anna was included in preschool and was fully integrated into classrooms with students who did not have disabilities throughout her schooling. Anna benefitted from public school because her teachers, parent and therapists met annually to discuss her progress and to plan an appropriate, individualized educational program. Sergi was unable to benefit from a public school education. Anna's teachers and therapists were held accountable for her learning. Teacher accountability was absent in Sergi's case.

Methodology: Based on current and historical data sources from the United States and Ukraine, the authors investigated and described qualitatively how laws affecting the education of children with disabilities developed and how access to education for students with disabilities is structured. Using a theoretical framework adopted from Turnbull and Turnbull (2000), they analyze how political policy and social issues affect the foundations of law affecting children with disabilities.

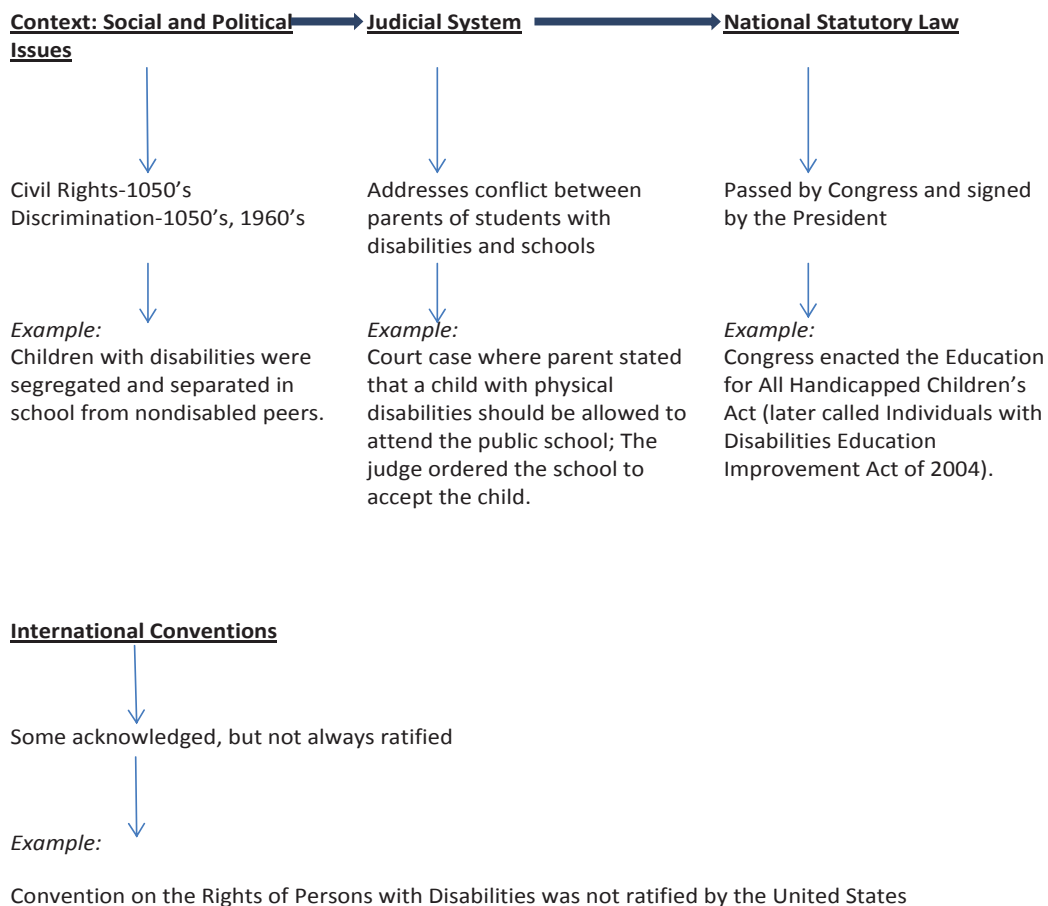
Data and Analysis: United States

How Law Developed

Turnbull and Turnbull (2000) put forward the idea that all educational issues were a reflection of political policy and social issues that in turn formed the foundation of federal law. In the United States, political policy and social issues resulted in conflict that was addressed by the judicial system and ultimately influenced federal statutory law. Figure 1 illustrates how laws protecting students with disabilities developed in the United States.

Educational services for students with disabilities in the public schools of the United States evolved over a period of 50 years. During the 1950's and 1960's, many children with disabilities were educated in special, separate schools or institutions. This exclusion was a reflection of political policy and social issues focused on educating students with disabilities in separate facilities. After several years of political upheaval and social unrest, the United States judicial system rendered decisions, building on cases involving racial discrimination,

that addressed discrimination in the education of children with disabilities. Case law formed the foundation of federal statutory law passed by the United States Congress mandating that children with disabilities receive a free appropriate public education. Federal statutory law passed by Congress ensured access to public school education for all children with disabilities.



*Figure 1. United States**
How Legal Protections for the Education of Children with Disabilities Developed

*Note: The United States system for development and implementation of law is complex. This figure is illustrative and simplified to show how the education of children with disabilities developed.

Access to Education for Students with Disabilities

There were three prominent factors in the provision of access to public school education for students with disabilities. These included the formation of parent advocacy groups, the movement for access to integrated public schools for African American students, and enactment of federal statutory laws guaranteeing access to public school education for students with disabilities.

Parent advocacy groups influenced access to the public school system for students with disabilities. The United States initially prohibited students with disabilities from receiving an education in the public schools. Special residential facilities were created to house students with disabilities separate from the public school system. At the same time, individual states enacted

and enforced laws that required children to attend school. These compulsory attendance laws were in place throughout the United States by 1918 (Yell, 2011). Between the early 1900's and late 1960's, the majority of states were allowed to exclude students with disabilities from public schools because it was felt that these students were unable to benefit from an education. However, because parent advocacy groups urged access to public schools for students with disabilities, some schools permitted these students to be educated in the school, although they were separated or segregated from other students. Despite the effort to educate some students with disabilities within the public schools, most students with disabilities were not successful, often failing classes, dropping out, or being expelled by the school (Yell, 2011). Beginning in 1922 with the founding of the International Council for Exceptional Children, organized parent advocacy groups challenged states within the United States judicial system so that their children could access public education. These parent and professional advocacy organizations were created throughout the United States. Many actively promote the rights of students with disabilities today.

In addition to parent advocacy, the civil rights movement of the 1950's and 1960's sought access to public schools for African American children and this movement formed the foundation of legal action taken to secure public school education for students with disabilities. During this time, laws prohibited African American students from attending the same schools as white children and separate schools were implemented. Supporters stated that separate schools for African American students were equal in quality to schools for white students. In 1954, the United States Supreme Court ruled on an important case, *Brown v Board of Education* (1954), which stated that separate schools for African American students were not equal and, therefore, violated the 14th Amendment of the US Constitution. The 14th Amendment assures that all citizens have equal protection under the law and the right of due process. The right of due process means that every citizen in the United States can challenge a governmental decision that affects their rights. Excluding an entire race of students from public education because of an "unalterable characteristic" or a personal characteristic that could not be changed, was unconstitutional. By denying equal protection, African American students were denied equal opportunity for an education. The rationale used to support this case stressed that segregation of an entire group of students was humiliating, resulted in negative consequences, and denied equal educational opportunity. The reasoning used by this important court case became the same argument used for the inclusion of students with disabilities in public schools.

During the 1970's, case law began to focus on access of students with disabilities to public schools under the constitutional right of equal protection under the law. Two significant court cases, *Pennsylvania Association for Retarded Citizens v Commonwealth of Pennsylvania* (1972) and *Mills v D.C. Board of Education* (1972), resulted in granting students with disabilities access to an education within the public schools. In the *Pennsylvania* case, a state's association for citizens with mental retardation and parents of children with mental retardation challenged the fact that their children were not allowed to attend public school. By denying these students access to the public school, the judges ruled that they were denied due process and equal protection and schools were ordered to educate these students. The *Mills* case was similar, but involved seven students with behavioral disabilities who were excluded from school. The judges ruled that, regardless of severity of the disability, students with disabilities were entitled to a public school education.

As a result of these judicial case law decisions and subsequent court cases, the United States Congress began to create federal statutory laws for all states mandating access to a public school education for students with disabilities. In 1975, the United States Congress passed the Education of All Handicapped Children Act (currently called Individuals with Disabilities Education Improvement Act of 2004). The law, based on a strong message from

advocacy groups and case law, recognized that millions of children with disabilities did not have access to a public education, and those who were educated within public schools did not receive an appropriate education. Congress recognized the need to provide schools with an incentive to serve students with disabilities. This law financially supported states in providing an education for students with disabilities between the ages of three and twenty-one. Among other principles, the law stipulated that any child with a disability, regardless of severity, had a right to a free appropriate public education within the public schools in the least restrictive environment.

Data and Analysis: Ukraine

How Law Developed

Education for students with disabilities in Ukraine evolved in a different manner than the United States. Figure 2 illustrates how laws protecting students with disabilities developed in Ukraine.

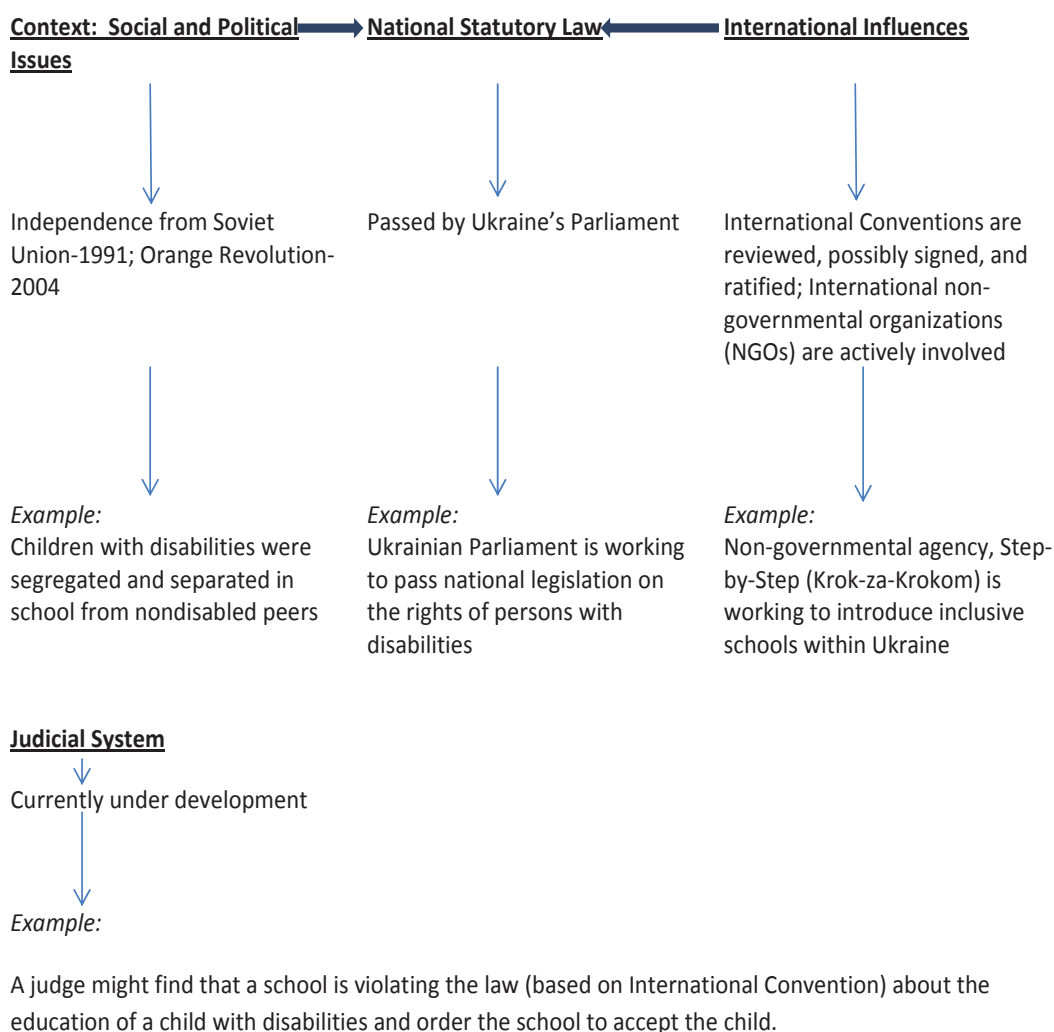


Figure 2. Ukraine*

How Legal Protections for the Education of Children with Disabilities Developed

*Note: The Ukrainian system for development and implementation of law is complex. This figure is illustrative and simplified to show how the education of children with disabilities developed.

Ukraine's history of Soviet domination influenced how children with disabilities were educated. From the early 19th century through the 1970's, Russia (and then the Soviet Union) provided segregated educational services for children with disabilities, primarily sensory disabilities. In 1991, after independence, Ukraine experienced significant social and political upheaval, moving from a rigid and predictable society to one with more freedom and fewer guaranteed social protections. The economy progressed from a centrally planned one to a free market. Consequences included high unemployment and a growing gap between rich and poor (UNICEF Ukraine, n.d.). In developing centralized or national laws within the fast-paced social and economic upheaval, Ukraine was influenced by international convention and international non-governmental agencies. Case law developed at the same time or after national law in Ukraine. It is difficult to locate examples of case law dealing with conflict over the education of children with disabilities and their right to an appropriate education. The authors assume that because societal change (i.e., independence) happened quickly that the judicial system was not fully implemented, funded, fair, or sensitive to conflict issues involving children with disabilities and their right to an appropriate education.

Ukraine's social and political context reflected turmoil after independence from the Soviet Union in 1991 and again in 2004 during the Orange Revolution. International conventions and an influx of international non-governmental agencies influenced Ukrainian national laws. Evidence does not suggest that internal conflict resolved by a fully functional judicial system formed the foundation of Ukrainian law to protect and educate students with disabilities, as in the United States (Ukrainian Helsinki Human Rights Union, 2006, 2009).

Access to Education for Students with Disabilities

Although Ukraine educated students with disabilities (mostly sensory disabilities) since the early 19th century, special education typically was provided in separate, segregated schools, similar to the United States in the 1950's and 1960's. Some children, especially in rural areas, did not attend school. In 1995, Ukraine ratified the European Convention on Human Rights, which provided social protection for people with complete, partial, or temporary disability, but these protections did not extend to education. In 2009, Ukraine ratified the United Nations Convention on the Rights of Persons with Disabilities (Interfax-Ukraine, 2011, United Nations, n.d.). Laws are currently changing in Ukraine to align consistently with the United Nations protocol, including an emphasis on equal protection in education and a mandate that educational institutions provide educational services to disabled people at an equal level to other people. In addition to national laws that have been influenced by international convention, many international non-governmental agencies (NGOs) have actively pursued inclusive education in Ukraine. For example, the Ukrainian Step-by-Step Foundation promotes and advocates for equal access to high-quality education for children with disabilities (International Step-by-Step Association, n.d.). The work includes training of teachers, inclusion of children with disabilities, education for minority children and child abuse programming. In addition, the Canadian-Ukrainian Project (n.d.), led by the Canadian Centre on Disability Studies, is implementing pilot projects over a five-year period (2008-2013) focusing on inclusive education within Lviv and Simferopol (Inclusive Education for Children in Ukraine, n.d.).

Despite these strengths, development and implementation of laws protecting children with disabilities and promoting inclusion in school settings has been inconsistent. Most children with disabilities remain segregated in special schools or are not in school. UNICEF (2007) reported that there are limited opportunities for children with disabilities outside of special schools and that many children with disabilities do not attend school. A report prepared by Ukrainian NGOs (2009) stated that the general educational system is not able to integrate

children with disabilities. According to the Ukrainian Helsinki Human Rights Union (2007), as many as 45,000 of Ukraine's 122,600 children with disabilities were placed in rehabilitation institutions. It is clear that *access* to appropriate and inclusive education is not available to most children with disabilities in Ukraine.

The judicial system in Ukraine does not appear to have influenced national legislation about the education of children with disabilities. Although national law provides for an independent judicial system, it has not yet been fully developed and funded. There have also been allegations of corruption and inefficiency (Ukrainian Helsinki Human Rights Union (2006, 2009). However, at least one court rendered a decision about access to education for a child with disabilities (Ukrainian Helsinki Human Rights Union, 2010). The case occurred in 2008 and involved the right of a child with a physical disability to an electric wheelchair so that he could access education. In this case, a District Administrative Court in Kyiv invalidated the Cabinet of Ministers Resolution 1015 where children with disabilities were deprived of the right to an electric wheelchair until the age of 14. The specific case involved a 7-year old child who was unable to use an electric wheelchair to obtain school lessons. The court found that Resolution 1015 conflicts with the Laws on the Fundamental Principles of Social Protection for the Disabled as well as the United Nations Convention on the Rights of the Disabled.

Results and Conclusions: Ukraine

The United States reflects a history of dramatic change within the past 50 years in educating students with disabilities. Ukraine is in a position to avoid mistakes made by the United States over the past 50 years and benefit from this experience. First and foremost, Ukraine may wish to consider developing a well-defined and funded infrastructure to support the education of students with disabilities that is consistent with the Convention on the Rights of Persons with Disabilities. This infrastructure might include both federal laws and financial incentives. Second, Ukraine may wish to begin focusing on assessment of individual student learning using evidence-supported instruction for all students with disabilities. Specific suggestions follow.

1. Disability could be clearly defined using nondiscriminatory assessments. Disability is more than sensory deficits, i.e., deaf, hearing impaired, and blind. The Convention on the Rights of Persons with Disabilities indicates that disability results from the interaction between people with impairments and the attitudes and physical barriers that block full participation in society (United Nations, n.d.1). The Convention also suggests that disability is not considered a medical issue, but results from interaction between the person and society. Based on more descriptive definitions of disability and nondiscriminatory assessments, Ukraine could develop a clear understanding of the number of persons with disabilities. This number could be used to allocate resources.
2. Ukraine might consider building financial incentives into the federal laws so that schools are supported in educating students with disabilities. In the United States, a finite amount of money is allocated to educate students with disabilities. Monies are then allocated to individual states based on the number of students who have disabilities and the number of teachers who work with these students. Schools write grants to the state showing how monies will be spent in order to receive funding. For example, a school district might have 400 students with disabilities and 20 teachers who are employed to work with these students. The school district might receive \$9000 (or the Ukrainian equivalent) to supplement the cost of hiring each teacher and \$500 (or the Ukrainian equivalent) to supplement the cost of educating each student with disability. Thus, the school district would receive \$380,000 (or the Ukrainian equivalent) from the federal government via the state to support the education of students with disabilities. With these funds, however,

the legal obligation to follow the law would be mandated. In the United States, 5% of funding must also be used for education and support of teachers to educate students with disabilities. In addition, the use of these funds would be monitored both by the federal government and the state.

3. Parents must have the right to challenge decisions about the education of their children with disabilities. This due process right serves as a balance of fairness to the system of education. If a school district does not appropriately provide for the education of a student with a disability, like the scenario of Sergi at the beginning of this article, the parent could challenge the school within the judicial system and the court would render a fair, unbiased decision.
4. Programs for students with disabilities should be individualized and reviewed at least annually by all professionals working with the student, including the parents. This group of people would then discuss the student's learning and plan an appropriate program for the next year.
5. Ukraine is in the enviable position of working with several international non-governmental agencies (NGOs) to develop programs to educate students with disabilities. These NGOs should be embraced because they provide best practice models internationally for educating students with disabilities.
6. It is important that schools assess the learning outcomes of students with disabilities. This assessment should then be used to guide future instruction.
7. Ukraine may wish to develop policies and procedures for schools to follow in the referral, evaluation, eligibility determination, and educational program placement for students with disabilities. Policies and procedures provide guidelines for schools and a means for determining if the school is providing the student with an opportunity for educational benefit. Policies and procedures protect the school and the child.
8. Ukraine may wish to develop procedures assuring that parents provide input into their child's education. Procedures could address issues of parent consent for a child's placement in special education, parent notice of meetings about the child and the outcome of these meetings, parent rights to challenge school district decisions, and parent access to student records and the confidentiality of those records.

Both Ukraine and the United States were challenged in providing access to public school education for students with disabilities. The United States achieved full access while Ukraine is still moving toward full access. Therefore, Ukraine may be in a position to learn from the trials and errors of the United States in the past 50 years of ensuring that students with disabilities have access to an education in the public schools despite different contexts, history, and legal system development.

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