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### **Becker Leaves Behind a Legacy Of Helping People With Disabilities**

BY JENNIFER R. CLARKE AND MARIPAT PILEGGI

06-27-2006

On June 14, 1982, as U.S. District Court Judge Edward Becker prepared to ascend to the 3rd U.S. Circuit Court of Appeals, he observed to the courtroom at the conclusion of a hearing: "As I look over all the cases that I had as a United States judge, the most significant by far has been this one and the case of which of I am most proud of my own participation. It has been the great experience of my judicial career . . . I just want to extend my high praise to Mr. [Frank] Laski and Mr. [Thomas K.] Gilhool [of the Public Interest Law Center of Philadelphia] and many other lawyers who have been associated with you in this venture."

The case to which Becker was referring was Pennsylvania Association of Retarded Children (PARC) v. Commonwealth of Pennsylvania, a seminal case originally brought by the Law Center's Gilhool in 1971. PARC established that children with disabilities have a right to a free and appropriate education and resulted in a consent decree whose essential guarantees were codified in the Education of the Handicapped Act of 1975, later becoming the Individuals with Disabilities Education Act (IDEA). In the late 1970s the Law Center brought an enforcement action before Becker to establish what, exactly, schools must do to provide a "free and appropriate education" to children with severe and profound disabilities in Philadelphia.

Becker brought the PARC case to a close after four years of hearings concerning the proper implementation of special education programs. During the proceedings, experts retained by the Law Center, their clients and other groups presented a rich summary of the state of the art in how to educate children with the most significant disabilities. As a result, the parties signed and Becker authorized a consent decree providing for extensive hands-on, in-class teacher training; occupational, physical and speech therapy; monitoring and enforcement mechanisms; and support for parents. For 20 years following PARC, Philadelphia was a leader in providing exemplary special education in Philadelphia.

There are sure to be many retrospectives commemorating Becker's intellectual power, humanity and judicial integrity. Here we highlight the significant role his insight and dedication played in the development of the legal principles through which children with disabilities are provided the "free and appropriate education" offered them by federal law.

Following his observations that brought the PARC case to a close, Becker's writing continued to secure the rights of children with disabilities continued. As a judge and then as chief judge on the 3rd Circuit, he repeatedly affirmed with eloquence and authority the substantive rights of children with disabilities to receive a meaningful and free public education.

That students with disabilities were entitled to meaningful - as contrasted with some - education was not clearly established before Becker's 1988 decision in *Polk v. Central Susquehanna Intermediate*

Unit. He rejected the lower court's holding that a school district that provides some educational benefit to a child with disabilities has made an improvement over no educational benefit at all and therefore has fulfilled its duties. The Act, Becker wrote, requires "more than a trivial amount of educational benefit." The school district must provide "meaningful benefit" to its students with disabilities.

In *M.C. v. Central Regional School*, a 1996 opinion, Becker gave content to school districts' obligations to provide a meaningful education, writing that a school district must remain vigilant that the services provided to a child with disabilities are effective and must alter a program that does not bring sufficient results.

He wrote, "A child's entitlement to special education should not depend upon the vigilance of the parents (who many not be sufficiently sophisticated to comprehend the problem) nor be abridged because the district's behavior did not rise to the level of slothfulness or bad faith. Rather, it is the responsibility of the child's teachers, therapists, and administrators - and of the multi-disciplinary team that annually evaluates the student's progress - to ascertain the child's educational needs, respond to deficiencies, and place him or her accordingly."

Becker's 1993 decision in *Oberti v. Board of Education* turned to and gave substance to the statutory requirement that children with disabilities be included in classrooms with children who do not have disabilities to the maximum extent possible. He characterized this as "a fundamental value of the right to public education for children with disabilities."

In *Oberti*, a case brought and argued by the Public Interest Law Center, Becker created the standard to which school districts must be held when determining whether educational programs that exclude students satisfy the act's demands. He held that a school district must strive to educate disabled students in mainstream classrooms with supplementary aides and services. If placement outside the classroom is necessary, the school district must then include the child in as many school programs with children who do not have disabilities "to the maximum extent appropriate."

Finally, Becker's decisions gave meaning and guidance with respect to the requirement that the meaningful education for children with disabilities be - as it is for children who do not have disabilities - a free education. In *M.C.*, the question for the court was the point at which a school's failure to provide a meaningful education requires the district to pay for compensatory education.

As Becker explained, "Tuition reimbursement was the [Supreme] Court's vehicle for satisfying both IDEA's pronouncement that children are entitled to a free appropriate education and the congressional intent to provide relief for the deprivation of this right." Without a standard for determining when such compensation should be awarded, the district court had applied a standard of "good faith."

Becker, again focusing on the results, not the intent, applied a standard that depended upon the actual benefit to the child: "When an [individualized education plan] fails to confer some (i.e., more than de minimis) educational benefit to a student, that student has been deprived of the appropriate education guaranteed by the IDEA." Therefore, he concluded, the right to compensatory education

should accrue from the point the district knows or should know of the failure of its plan.

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