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Inclusion for Students with Intellectual Disabilities: A Philosophical Reconstruction of the
Student to Expand Access and Its Benefits

DISSERTATION

A dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Philosophy in the
College of Education
at the University of Kentucky

By

Derek Thomas Myles Daskalakes

Director: Dr. Eric Thomas Weber,

Associate Professor of Educational Policy Studies and Evaluation

Lexington, Kentucky

2023

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ABSTRACT OF DISSERTATION

Inclusion for Students with Intellectual Disabilities: A Philosophical Reconstruction of the Student to Expand Access and Its Benefits

This dissertation attempts a philosophical rethinking of the concept of the student in educationally relevant disability law for the sake of expanding access to general education settings for students with intellectual disabilities (ID), without committing to the approach known as full inclusion. I show that students with ID receive significantly less access to general education settings in comparison to other student populations, and that empirical studies show this to be harmful to their learning and developmental outcomes. Discussion of this problem in the inclusion literature assumes one of two positions that separately support either maintaining the status quo regarding the access to general education settings that students with ID receive, or changing educational policy and practice to enable the full inclusion of all students. I argue that adherents of the status quo fail to fully acknowledge the problem as such, and adherents of full inclusion do not adequately attend to the practical issues related to using a one-size-fits-all model of educational practice. Furthermore, I argue that both positions fail to consider the ontological and epistemological dimensions of the problem, and doing so could provide a middle theoretical and practical position that would support expanding the inclusion of students with ID, without committing to their full inclusion.

Using philosophical resources from John Dewey's work, I argue that there are two key philosophical assumptions inherent to educational policy that collectively produce an *a priori* and liberal conception of the student that governs the distribution of access to educational resources for students with ID. The liberal conception of the student does this by positing them as an individualized and rational being whose core features of learning and development are accessible to educational evaluations. The value and use of these evaluations forms the cornerstone of the educational rights of students with ID that require the provision of a free and appropriate public education (FAPE) to all students identified with a disability. I show that the centrality of educational evaluations for providing FAPE establishes at least three conditions that are not satisfied in educational practice. I also show that educational evaluations prioritize forms of learning and development that students with ID often struggle to demonstrate, which increases the likelihood that they get placed in separate special education settings. Together, both points reveal the necessity of reconceptualizing the student for potentially resolving the problem.

Finally, I develop an alternative conception of the student and conduct a thought experiment that shows plausible ways that aspects of educational decision-making, educational rights, and the purpose of special education services can be interpreted and function differently in response to reconceptualizing the student. This demonstration serves to provisionally trace out a theoretical and practical middle ground between the dominant positions assumed by adherents of the status quo and full inclusion, respectively. Overall, my analysis shows that the problem can be productively framed and analyzed by emphasizing the ontological dimensions of educational policy and practice. Furthermore, I show that the problem can be potentially resolved by reconceptualizing the student in order to increase opportunities for students with ID to access general education resources and their associated benefits.

KEYWORDS: Inclusion, Intellectual Disabilities, Education Policy, Special Education, Philosophy, John Dewey

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Inclusion for Students with Intellectual Disabilities: A Philosophical Reconstruction
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DEDICATION

To my father, Joseph Daskalakes. You have supported my journey from its beginning and witnessed all of my failures and triumphs. You have been my best friend and champion through it all, even when I did not acknowledge you as such. I have often failed to express my emotions as freely or as deeply as I should throughout my life. Know that I love you very much, and any current or future successes that I may have are due in large part to your unconditional protection, guidance, and support. I am now as I have always been, your son.

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CHAPTER 1.

1.1 Introduction

Two landmark disability laws were passed during the 1970s designed to establish and ensure the educational rights of students with disabilities. These two laws were Section 504 of the Rehabilitation Act of 1973 and the Education for All Handicapped Children Act (renamed the IDEA in 1990), respectively. Since their passage, both laws have served as the principal legal source that establishes the educational rights of students with disabilities, and the demands placed on public schools to ensure such rights in educational practices. Unless otherwise specified, I will refer to both laws under the collective term of educationally relevant disability law.¹ A central goal of these laws remains enabling students with disabilities to access and benefit from educational resources, settings, and services that are commonly accessible to other student populations.² The relationship between rights, access, and educational practices for students with disabilities is often characterized and debated amongst scholars under the term inclusion.

My professional experience as a special education teacher has been an important factor in motivating my interest in this topic and its associated problems. I have often

¹ My purpose in introducing this term is to distinguish these laws and their role in structuring special education processes for students with disabilities from the Elementary and Secondary Education Act of 1965, now known as the Every Student Succeeds Act, and the Americans with Disabilities Act. While ESSA has affected the early history of educationally relevant disability law (Yell, 2019) and the more recent standardized testing mandates have influenced special education practice (Smith, 2010), it does not represent the principal legal source that structures special education practice. The ADA duplicates Section 504 of the Rehabilitation Act in prohibiting discrimination on the basis of disability by entities that receive direct or indirect federal assistance (Holler & Zirkel, 2008). Furthermore, the ADA's principal domain of application is postsecondary institutions, such as those pertaining to employment, housing, and college. As such, the focus of the present examination on K-12 public education justifies an emphasis on educationally relevant disability law, while only addressing ESSA and the ADA where appropriate.

² My use of the term 'other student populations' is meant as a collective reference to students without disabilities and students that receive special education services under labels other than intellectual disability.

observed that separate special education practices resulted in an increase in exclusion rather than an increase in inclusion. That is, much of what I did as a special educator required me to separate students with disabilities from general education settings and their nondisabled peers. Consider the example of one of my former students, Luke (not his real name), who was a second-grade student that received special education services under the label of intellectual disability (ID). Luke is a fun and playful child that enjoyed being around and interacting with his general education teachers and peers. His academic and adaptive skills were not age appropriate and he required paraprofessional support to facilitate his inclusion in general education settings. He characteristically brought a lot of energy to the classroom and was very motivated to participate however he could, which often had a positive and motivating effect on his classmates. Despite that, Luke spent roughly half of his school day in restrictive special education settings working on Individualized Education Program (IEP) goals with myself or related service providers. Luke was removed from the general education classroom during the second half of nearly all instructional periods (e.g., language arts, math) to come to restrictive special education settings. Even at the time I questioned to what extent Luke was really included and the visible ways in which he seemed to benefit from being included also led me to question whether he was included “to the maximum extent appropriate,” per educationally relevant disability law (IDEA § 1412 (a)(5)(A)).

Students with disabilities and, students with ID in particular, have been historically excluded from accessing American public education services until the passage of educationally relevant disability law. This event was a watershed moment in American history where the educational rights of people with disabilities were finally recognized and

protected by the law. My story about Luke is significant because it serves to raise important questions regarding whether educationally relevant disability law has successfully resolved the historical exclusion of students with ID. To paraphrase Kleinert et al. (2015), can we really consider a student included in the same educational opportunities, settings, and resources as other student populations given the level of separateness that their educational placement entails? I join a growing chorus of scholars in arguing that students with ID are not as included as much as they could or should be in general education settings and services with other student populations.

1.2 Outline of Chapter 1

The focus of this introductory chapter will be to demonstrate the existence of an empirical problem that arises from the degree of access to general educational resources provided to students with ID and the deleterious effects on their learning and development outcomes that have been shown to result from this practice. I will argue that this empirical problem raises important questions regarding the meaning of educational rights established in educationally relevant disability law, the relationship of educational rights to access, and the demands both ideas place on practitioners to ensure such rights in educational practice. I will begin by providing some historical context on the exclusion of students with ID from accessing public education services during the 19th and 20th centuries to give the reader a sense of the initial problems that educationally relevant disability law was expressly designed to combat. Next, I will develop a review of the empirical literature on the inclusion of students with ID that shows that they do not receive access to the educational services that are most appropriate for producing the best possible learning and developmental outcomes.

I will then present a review of the inclusion literature to demonstrate the prevalence of two views that diverge in their support for either maintaining the status quo regarding the access that students with ID receive to general education settings, or changing educational policy and practice to enable the full inclusion of all students regardless of ability and educational need. Both views are characterized by different understandings of the constitution of educational rights established in educationally relevant disability law, and what each understanding means for the distribution of access to general education resources for students with ID. I will then argue that both of these views of educational rights are problematic for students with ID regarding their potential and actual implementation in educational practices, which indicates the need for additional conceptual resources in examining the empirical problem. Furthermore, I will argue that both views reflect a limited use of philosophical resources in emphasizing the ethical and political aspects of educationally relevant disability law, which notably omits a consideration of ontological and epistemological aspects of policy. Next, I will argue that the work of American pragmatist and educator, John Dewey, offers a valuable set of philosophical resources that can be productively applied to this problem. The goal of these efforts is to demonstrate the need to articulate a middle ground between the two dominant positions within the inclusion literature briefly described above that can enable educational practices that better ensure the educational rights of students with ID through expanding their access to general education resources and their associated benefits. Lastly, I will conclude this introductory chapter with a chaptered outline detailing how the remainder of my examination will proceed.

Considered together, the project to follow will attempt to add potentially meaningful knowledge to the literature on the inclusion of students with ID by addressing several notable gaps, which primarily includes (1) expanding the use and type of philosophy being applied to themes related to inclusion and (2) applying Dewey's work and American Pragmatism more broadly to themes related to disability and special education. My analysis will show that that the relationship between educational policy and practices that govern inclusion for students with ID is grounded in an a priori and liberal conception of the student that grounds the value and use of educational evaluations for informing the determination of educational need and the distribution of access to educational resources in response. Furthermore, that a liberal conception of the student establishes important priorities within educational law and policy that function as key factors in continuing to deny students with ID access to general education resources and their associated benefits. Retheorizing the way that the student is conceptualized in educationally relevant disability law is necessary for enabling the appropriate changes to occur that results in the expanded but not full inclusion of students with ID in general education settings.

1.3 Historical Context

The exclusion of students with ID in American public education has a long history that stretches back to the mid-19th century. It was during this time that public education systems were beginning to take shape in many states (Graham, 2005; Osgood, 2005) and the organization of students according to ability was an important early institutional concern. Indeed, the Boston public school system established the first grade level system in which students were organized by chronological age, which quickly became the standard

used by other urban school systems (Osgood, 2005). Beginning with Providence, Rhode Island in 1896,³ the public education systems in many major cities (e.g., Boston, New York, Philadelphia, Detroit, Baltimore) began instituting segregated classes for children with mental retardation (Osgood, 2005; Trent, 2017). Around the same time period the first residential schools for the training of adults with ID began appearing in Pennsylvania (1852), New York (1855), Ohio (1857), Connecticut (1858), Kentucky (1860), and Illinois (1865) (Albrecht, Seelman, & Bury, 2001). The mission of these residential schools was to educate and reintegrate people with ID into their local communities (Earle, 1877 in Albrecht et al., 2001). It is notable that even at this point in American history ID was met with exclusion by public education systems.

The rise of science as a primary tool of government and institutional discourse throughout the 18th and 19th centuries⁴ exacerbated the exclusion of students with ID in the 20th century in important ways. The eugenics movement became influential in America between 1880 and 1920, which drove the interpretation of ID as a form of disease and social deviance that many studies of the day linked with “criminality, immoral behavior, and pauperism” (Albrecht et al., 2001, p. 38). This view of ID commonly produced social policies and practices that enforced institutional segregation (Albrecht et al., 2001), which produced a corresponding increase in the number of state institutions to house people with ID (Albrecht et al., 2001). The number of people with ID placed in these state institutions consistently rose from 1,400 in 1880, to 29,000 in 1940, before peaking at 194,650 in 1967

³ Notably, this class was not housed in a public school, but rather was operated in a fire station (Trent, 2017).

⁴ See the work of Michel Foucault. Most notably, *Birth of the Clinic* (1963), *Madness and Civilization* (1965), and *Discipline & Punish: The Birth of the Prison* (1975).

(Albrecht et al., 2001). The development and use of intelligence testing to identify ID accompanied the expansion of institutionalization in America during this period. By the early 20th century, it became standard practice in public education to use intelligence tests to determine student abilities and placement (Graham, 2005). Between 1904 and 1930 state institutions served as the primary source of training for special education teachers in the use of intelligence testing (Trent, 2017). By 1932, there were more than 75,000 school-age children that had been placed in separate special education classes and schools with a label of mental retardation (Osgood, 2005).

The early history of American public education demonstrates two key points that will be important for my purposes. First, public education systems and the exclusion of students with ID developed almost in tandem from the beginning. Historical evidence suggests that educational administrators have long sought to justify the exclusion of students with ID both from and within public schools. Indeed, questions related to whether students with ID could benefit from instruction, how their presence would affect the learning of their nondisabled peers, and how their placement in general education settings would burden teachers have been continually raised as justifications for their exclusion since the mid-19th century (Osgood, 2005). Trent (2017) has suggested that compulsory attendance laws were a major impetus for the creation of separate special education classes because they increased the number of students with ID attending public schools. Furthermore, these laws were often selectively enforced by school administrators to allow students with ID to remain at home (Trent, 2017), or were actively upheld by the court system through rulings in Massachusetts (1893), Wisconsin (1919), Ohio (1934), Illinois (1958), and North Carolina (1969) that supported the right of states to deny access to public

education services (Yell, 2019). Second, the meaning and use of educational evaluations for the purposes of identifying and placing students with ID in separate special education settings has been standard practice for well over a century. Specifically, intelligence tests have historically been used to justify the need to educate students with ID in specialized classroom settings away from their nondisabled peers. As early as 1913, Stanford-Binet tests accounted for 72% of all special education assessments, and over half of trained examiners were special education teachers (Trent, 2017). Considered together, this history reveals that legal and educational mechanisms have traditionally been used to deny or restrict the access of students with ID to general education settings and services and their associated benefits.

1.4 Educationally Relevant Disability Law

Two significant factors combined to produce important legal and institutional changes that would alter the educational landscape for all children with disabilities during the mid-20th century. The first factor is the emergence of grassroots activism led by parents and practitioners that resulted in the formation of organizations that include The Council for Exceptional Children in 1922 and the Association for Retarded Citizens (ARC/USA) in 1950 (Yell, 2019). These and similar groups were instrumental in challenging the legal status quo that upheld the exclusion of students with ID in public education (Downing, 2010), which set the stage for a national civil rights movement to develop (Yell, 2019). The second factor occurred when the U.S. Supreme Court ruled in the case of *Brown v. Board of Education* (hereafter, *Brown*) that state-maintained segregation on the basis of unalterable characteristics (e.g., race) was unconstitutional on the grounds that it violated the Equal Protections Clause of the Fourteenth Amendment (Yell, 2019). The *Brown*

ruling established a legal precedent for use in future civil rights litigation and by 1975 a total of 46 legal cases had been filed on behalf of students with disabilities in 28 states (Zettel & Ballard, 1982 in Yell, 2019).

The combination of these and other factors produced a seismic shift in the American legal landscape that culminated in the development of the aforementioned Section 504 and the IDEA. Section 504 is a federal civil rights law that prohibits discrimination on the basis of disability by any agency that receives federal support (Albrecht et al., 2001; Yell, 2019). Within the domain of public education, Section 504 requires that students with disabilities are not prevented from accessing educational opportunities and resources on the basis of their disability status (Holler & Zirkel, 2008). Section 504 also allows for the provision of an institutional support plan (504 Plan) to qualified individuals that allows for academic and social supports to students with disabilities in public schools (Holler & Zirkel, 2008).⁵ The IDEA contains a more extensive articulation of the educational rights established for students with disabilities from 3 to 21 years old. The right to receive a free and appropriate public education (FAPE) regardless of disability status is the central substantive right established by the IDEA (IDEA § 1400 (d)(1)(a)). The provision of FAPE is enabled by the provision of an IEP and the associated assessment process, both of which comprise the central procedural rights established by the IDEA (IDEA § 1412 (a)(4)). Notably, the IDEA requires IEP teams to determine the most appropriate setting(s) for the implementation of the IEP, or the least restrictive environment (LRE) that allows students

⁵ A 504 Plan is both similar and different than the better-known Individualized Education Program (IEP) provided through the IDEA. It is typically provided to students that do not qualify for special education services under IDEA, but the educational team determines that additional support is needed for the student to be successful.

with disabilities to be educated alongside their nondisabled peers “to the maximum extent appropriate” (IDEA § 1412 (a)(5)(a)). Furthermore, the IDEA stipulates that students with disabilities can only be removed from general education settings if their inclusion cannot be “achieved satisfactorily” through the use of supplementary aids and services (Wehmeyer, Shogren, & Kurth, 2021, p. 36). Together, these two disability laws represent the most significant attempt by the federal government to make public education accessible and beneficial for children with disabilities.

1.5 Educational Access for Students with ID

There is little doubt that educationally relevant disability law has positively affected the degree to which students with ID are able to access and benefit from public education services. The Office of Special Education Programs (OSEP) with the US Department of Education publishes an annual report to Congress that includes a detailed presentation of special education service statistics. The earliest OSEP annual report available online was published in 1995 and reports on the 1992-93 school year (SY). During the 1992-93 SY, more than 4.6 million children with disabilities received special education services, which included 532,365 students with ID under the now obsolete label of mental retardation (OSEP, 1995). This figure represents a significant increase in the number of children with disabilities accessing special education services in comparison to figures reported during the mid-20th century prior to the passage of educationally relevant disability law. For example, the National Society for the Study of Education (1950) reported that roughly 365,000 children with disabilities received special education services during the 1947-48 SY, many of which were children with “mental deviation” characterized by “well below average” intelligence (Osgood, 2005, p. 41). This increase in access has continued to

expand as the most recent report from OSEP (2021) stated that nearly 6.5 million children with disabilities received special education services in public schools during the 2018-19 school year, which included nearly 421,000 students with ID between the ages of 6 and 21 (OSEP, 2021).⁶ These statistics show that educationally relevant disability law has significantly expanded access to educational resources for children with disabilities in comparison to the past.

On the surface, the figures presented above suggest that educationally relevant disability law has resolved the historical exclusion of students with ID in public education. The OSEP reports, however, also contain statistics regarding where children with disabilities receive instruction during the school day that reveal that students with ID are not as included as it may seem. During the 1992-93 SY, 56.8% of students with ID were included in general education settings for less than 40% of the school day (highest disability category), with an additional 26.8% of students with ID being included between 40-79% of the school day (3rd highest disability category) (OSEP, 1995). Furthermore, a higher percentage of students with ID (7.9%) were educated in separate school settings than those that were included in general education settings for at least 80% of the school day (7.1%) (OSEP, 1995). Wehmeyer, Shogren, and Kurth (2021) summarized their review of the same report by stating, “Basically, almost 57% of students with ID were educated in self-contained or separate classrooms, almost 7% in separate schools, and only 7% were included” (p. 37).

⁶ Notably, this figure does not include an additional 89,743 students with ID (1.4% of the disability population) that were 3-5 years of age, or the 129,441 students (2.0% of the disability population) that received special education services under the label of multiple disabilities (OSEP, 2021). As such, the actual number of students with ID is roughly 220,000 more than the reported number of students that formally receive special education services under the label of ID.

The most recent OSEP (2021) report reveals a similar pattern in which the majority of students with ID are not included in general education settings for most of the school day. During the 2018-19 SY, 48.7% of students with ID were included in general education settings for less than 40% of the school day (highest disability category), with an additional 27.9% of students with ID being included between 40-79% of the school day (highest disability category) (OSEP, 2021). Only 16.6% of students with ID were included in the general education setting for at least 80% of the school day (2nd lowest), with an additional 6.7% of students with ID being educated in other environments (e.g., separate schools, hospitals, and homebound settings) (OSEP, 2021). These figures call into question whether students with ID are included in the same educational opportunities and resources as other student populations given the high degree of separateness in their educational placements (Kleinart et al., 2015). Notably, the statistics reported by OSEP do not distinguish between the inclusion of students with ID in academic and nonacademic settings. In a study reviewing 88 IEPs, Kurth et al. (2019) found that nearly 60% of the time during which students with low-incidence disabilities were included in general education settings occurred during nonacademic activities (e.g., electives, recreation). These findings suggest that students with ID are less meaningfully included in general education settings and services than the already meager OSEP statistics suggest.

Studies have shown that the inclusion of students with ID following the passage of educationally relevant disability law has not increased at similar rates as students receiving special education services under other disability labels. In a review of placement data over a 20-year span, Kurth, Morningstar, and Kozleski (2014) observed that the historical trend toward greater access to general education settings and services that has occurred for

students with high-incidence disabilities (e.g., learning disabilities) has not occurred at comparable rates for students with low-incidence disabilities. McLeskey et al. (2012) conducted a similar review of placement data from 1990 to 2007 and found that most of the statistical increase in students with disabilities accessing general education services was accounted for by students with learning disabilities. Morningstar, Kurth, and Johnson (2017) analyzed placement data from 2000 to 2010 and found that students with ID and students with multiple disabilities were significantly more likely than students with other disability labels to spend less than 40% of the school day in general education settings (4 times more likely in 2000 and 1.5 times more likely in 2010). Kurth et al. (2014) also found that students with low-incidence disabilities were disproportionately placed in the most restrictive settings in comparison to other student populations. Furthermore, the separate placements of students with ID are unlikely to change over time and essentially become “terminal” once they are instituted (Kurth et al., 2014, p. 20). These findings reveal that while educationally relevant disability law has improved access to general education settings and services for students with ID, they receive significantly less access in comparison to other student populations.

1.6 Empirical Effects of Reduced Educational Access for Students with ID

Studies have shown that the diminished access of students with ID to general education settings and services also negatively affects their access to important learning opportunities and resources. In a study of middle school students with ID, Wehmeyer, Lattin, Lapp-Rincker, and Agran (2003) found that students with ID in inclusive settings had increased access to the general education curriculum and were more likely to be engaged with tasks in connection with district learning standards than students with ID in

separate special education settings. In a similar study of elementary students with ID, Soukup, Wehmeyer, Bashinski, and Bovaird (2007) confirmed both of these findings, while also finding that seating students with ID with at least some of their nondisabled peers also provided increased access to the general education curriculum. Related studies have also linked the general education setting with increased access to qualified instructors (Mason-Williams, Bettini, & Gagnon, 2017), increased access to content area expertise (Kleinart et al., 2015), and increased social opportunities to interact with peers (Carter & Hughes, 2005). Some scholars have further argued that separate special education settings also serve to deny students with ID access to valuable peer modeling and competent conversational partners (Kurth et al., 2016) that are essential for learning and development in nonacademic areas (Halle & Dymond, 2008; Jackson et al., 2008). Ryndak (2010) has broadly argued that separate special education settings are fundamentally unable to replicate aspects of the general education setting that are invaluable to the academic and social learning and development of students with ID.

Studies have also shown that increased access to general education settings and services are positively associated with better learning and developmental outcomes for students with ID. By extension, the reduced access described above can negatively affect their learning and developmental outcomes. In a comparative study of 134 elementary students with ID, Dessemontet and Morin (2011) found that students educated in general education settings demonstrated increased literacy skills in comparison to those educated in separate special education settings. In a similar comparative study, Blackorby et al. (2007) found that students with ID instructed in inclusive settings read between 23 and 43 words per minute faster than students instructed in more restrictive settings. Additional

studies have shown a positive association between an increase in time spent in general education settings and increases in student performance on language arts and math assessments (Cole et al., 2020; Cosier et al., 2013; Wagner et al., 2005). Studies have also shown similar findings regarding improved classroom engagement and increased communication interactions (Foreman, Arthur-Kelly, & Pascoe, 2004), increased social interactions with nondisabled peers (Carter & Hughes, 2005), and an increase in the demonstration of self-determination skills (Hughes et al., 2013). Oh-Young and Filler (2015) conducted a meta-analysis of empirical studies published between 1980 and 2013 and found that students with disabilities in more inclusive settings significantly outperformed those in separate settings on measures of academic and social outcomes. Furthermore, these findings corroborate those of two previous meta-analyses separately conducted by Carlberg and Kavale (1980) and Wang and Baker (1985) that collectively demonstrate the benefits of general education settings and services for students with ID from 1932 to the present. There have also been studies that have linked the inclusion of students with ID in general education settings to learning and social benefits for nondisabled peers (Downing, 2010; Schaefer, Cannella-Malone, & Carter, 2016). Hehir et al. (2016) succinctly summarizes contemporary research on the effects of inclusion on the learning and development outcomes of students with ID in writing, “There is clear and consistent evidence that inclusive educational settings can confer substantial short- and long-term benefits for students with and without disabilities” (p. 2).

1.7 Educational Rights and Access in the Inclusion Literature

The empirical problem demonstrated in the preceding literature review is rather straightforward. Special education service statistics have consistently shown that students

with ID receive far less access to general education settings and services than other student populations. That access differential is not illegal or even unintended under educationally relevant disability law, which does not guarantee equal access to specific educational settings and services (Cosier et al., 2020), but rather students with disabilities are guaranteed access to appropriate educational settings and services in accordance with the IEP (IDEA § 1400 (d)(1)(a); IDEA § 1401 (9)(A-D)). As such, educationally relevant disability law distributes access that is intended to benefit students with ID by providing an individualized level of access to both general and special education resources. The problem arises in response to the findings of a large and growing empirical scholarship that have found that increased access to general education resources facilitates better learning outcomes for students with ID, as well as improved access to developmental opportunities that often cannot be replicated in other settings. This point becomes particularly visible in comparative studies that have shown that students with ID that spend more time in general education classrooms outperform students with ID that spend more time in separate special education settings in a variety of academic and social measures of learning and development.

For my purposes, the empirical problem described above raises important questions regarding the meaning of educational rights as they are established in educationally relevant disability law, the relationship between educational rights and access, and the demands that these ideas place on practitioners to ensure such rights in educational practices. Here I will consider how scholars of inclusion have interpreted these concepts and the relationships between them as it concerns students with disabilities. There seems to be widespread agreement in the inclusion literature that the central achievement of

educationally relevant disability law was to establish and protect educational rights for students with disabilities (Blanck, 2020; Braddock & Parrish, 2001; Downing, 2010; Frey, 2019; Gartner & Lipsky, 1987; Kaufman & Badar, 2020; Yell, 2019). This agreement concerns access in the broad sense of establishing the right to access public education resources, settings, and services. The brief history of education for students with ID developed above makes clear that this population has commonly been excluded from accessing public schools. Furthermore, the preceding literature review makes clear that students with ID continue to be excluded in ways that have been found to negatively affect their learning and developmental outcomes. These circumstances seem to fly in the face of the principal reason for the enactment of educationally relevant disability law as a response to the historical exclusion of people with disabilities from accessing vital social and institutional goods in American society.

The broad sense of access leaves open a vital question regarding which educational resources, settings, and services do students with disabilities have a right to access. This question concerns a narrower sense of access, and it is here that we begin to see significant disagreements within the literature among scholars of inclusion. The significance of this disagreement, to repeat, concerns the meaning of educational rights, its relation to access, and how educational practices ought to function in response. The two central positions that characterize the inclusion literature interpret educational rights to mean access to either appropriate or equal access, respectively (Marx et al., 2014; Travers et al., 2020). Appropriate access is the understanding of rights established in educationally relevant disability law and described above, which establishes educational practices designed to determine educational need on a case-by-case basis before providing access to the

educational resources, settings, and services that are appropriate for meeting such needs. On this view, simply providing access to a general educational classroom is insufficient to ensure the right to access established in the law (Frey, 2019). By contrast, equal access is the understanding of rights as requiring practitioners to provide access to the same educational resources, settings, and services for all students regardless of ability level. On this view, limiting access to separate and specialized settings on the basis of appropriateness signals a violation of basic civil rights (Jackson, Ryndak, & Wehmeyer, 2008) and is often argued to represent a form of institutionalized discrimination (Smith, 2010). Below, I will provide a more in-depth account of both positions and the central claims that characterize both as they concern the meaning of educational rights and how educational practices ought to operate so as to ensure them.

Scholars that support the view of educational rights as appropriate access (e.g., status quo) essentially make an argument from educational efficacy. That is, educational rights principally concerns access to educational resources, settings, and services that will be most beneficial to the learning and development of students with disabilities. The central argument holds that a single set of educational resources will not successfully provide meaningful learning and developmental opportunities that benefit all students to the same degree (Imray & Colley, 2017). To do so would violate the law by denying access to appropriate educational resources outlined in the IEP, as well as severely limit the flexibility in how practitioners can meet the learning and developmental needs of students with disabilities (Crockett, 2020). The reasons offered by scholars in support of this position tend to fall into either practical or political domains. In the practical domain, scholars have argued that significant barriers exist to fully including all students in the

general education classroom, which principally includes limitations to educational resources and training (Osgood, 2005). In the political domain, scholars have argued that disability and inclusion in education is distinct from other domains of social life, and to collapse disability into other forms of human diversity, such as race and gender, is to misunderstand this distinction (Anastasiou, Kauffman, & Michail, 2014; Dixon, 2005; Kauffman, 1995; Kauffman, 2020; Kauffman & Badar, 2020; Wood, Wang, & Morgan, 2020). Most scholars that support this position agree that students with disabilities ought to be included in general education settings with their nondisabled peers to the greatest extent possible (Osgood, 2005). However, they deny that the full inclusion of all students in general education settings will necessarily benefit the learning and development of all students (Gallagher, 1995; Kauffman, 1995). Furthermore, practical limitations carry the possibility of doing harm to students and families if their respective educational needs cannot be met in general education settings (Kauffman & Badar, 2020). As such, full inclusion represents a denial of the view of educational rights established in educationally relevant disability law that entails access to appropriate educational resources based on a student's specific educational needs.

Scholars that support the view of educational rights as equal access (e.g., full inclusion) essentially make an argument from ethics and politics. On this view, an educational right principally concerns access to the same educational resources, settings, and services regardless of ability or educational need. The central argument holds that equal access represents a basic human and civil right to be included in and benefit from access to educational resources available to all students regardless of ability. Failure to ensure the right to equal access, for these scholars, represents a denial of access to the best

educational resources and opportunities available (Oh-Young & Filler, 2015), as well as a failure to protect against the kind of discrimination that educationally relevant disability law was designed to prevent (Smith, 2010). This view of educational rights and its relationship to access closely aligns with the argument that separate settings is inherently unequal that was advanced during the American civil rights movements to great effect (Colker, 2006; Connor, 2010; Kauffman, 2020; Kauffman & Hallahan, 1995). Like the previous position, the reasons offered by scholars in support of equal access often fall into practical and political forms of argumentation and support. Practical arguments include the benefits of inclusion for students with disabilities (Hehir et al., 2016; Wehmeyer et al., 2021), the absence of clear and consistent benefits of separate educational settings (Smith, 2010), and the availability of educational strategies and training to enable teachers to effectively work with them (Ryndak, Jackson, & White, 2013). Political arguments often frame special education as the continuation of eugenicist and segregationist institutional practices (Baglieri et al., 2011; Smith, 2010) that are reflective of a medicalized and ableist conception of disability that serves to devalue and marginalize students with disabilities (Kurth et al., 2014; Osgood, 2005). The collective position expressed by these scholars is that equal access represents both an ethical and political imperative that can only be satisfied by fully including students with disabilities in general education settings with their nondisabled peers.

It should be clear from the discussion above that both respective views of educational rights reflect different views of access and how it should be distributed to students with disabilities. Here I will raise some problems that I see with both positions as it concerns providing an account for and potentially resolving the empirical problem

described in the previous section. On the view of rights as appropriate access (e.g., status quo), the empirical problem is not an issue that cannot be resolved over time because access can be revised in accordance with the IEP in response to additional student data. One significant difficulty with this position is that the body of scholarship that demonstrates the empirical problem continues to grow and further indicate appropriate access frequently does not lead to the best learning and developmental outcomes for students with disabilities, including many students with ID. The central criticism that has been raised about this scholarship concerns the difficulty of doing experimental design research in a classroom setting, which prevents the establishment of a causal connection between inclusion and various effects on student learning and development (Cook & Cook, 2020; Crocket, 2020; Imray & Colley, 2017; Kauffman & Badar, 2020). I will consider this and related criticisms in greater depth in Chapter Two, but it will suffice for now to note that I disagree that it warrants a dismissal of the important questions that this scholarship raises about the effectiveness of appropriateness as a vehicle for distributing access. Another significant difficulty with this position is that distributing access based on educational need entails a unidirectional understanding of special education services. Similar to a medical treatment, special education services are viewed as educational treatments that are administered by teachers to address targeted and measurable aspects of the student's learning and development. This approach minimizes or omits the value of contextual, environmental, and unstructured learning opportunities that do not fall neatly into a unidirectional and measurable model, as well as ignore the unpredictability that can often character the learning and developmental process for all students. While additional problems might be associated with this position, the two mentioned here I think

demonstrate important limitations for this view as it applies to potentially addressing the empirical problem.

The view of rights as equal access (e.g., full inclusion) raises different, but no less significant problems for explaining and potentially resolving the empirical problem. On this view, the empirical problem is at least in part the product of limited access to general education resources and its associated benefits to student learning and developmental outcomes. One important issue with this view is the minimization of the practical concerns that inform the organization and operation of educational practices that are integral to making access meaningful for students that demonstrate a wide and fluid range of learning and developmental needs. As such, the professional burdens placed on practitioners and the possibility that inclusion can be practiced poorly are not serious concerns on this view. I think this point echoes an earlier one noted above regarding the presumption that all students will benefit in similar ways from accessing similar educational resources. Both points minimize the practical requirements of inclusion, as well as the potential harm done to students if it is not done well. A second problem that I see with this view is that it effectively eliminates the possibility of choice regarding access that currently exists for both parents, guardians, and high school students with disabilities. Under the law, school districts are required to maintain a continuum of placements in order to provide maximal flexibility in addressing student needs (Kauffman & Badar, 2020; Rozalski, Stewart, & Miller, 2010), which allows a limited degree of choice to be exercised by the members of an IEP team. Mandating the full inclusion of all students with disabilities would seem to deny the right of people with disabilities to be separate for their own reasons (Colker, 2006; Osgood, 2005). The fact that the view of rights as equal access has received much of its

support from academia, rather than from practitioners, parents, and students with disabilities may explain the minimalization of the practical dimensions and choices related to inclusion (Osgood, 2005).

The purpose of this brief discussion has been to demonstrate the inadequacy of both positions for explaining and potentially resolving the empirical problem developed in the previous section. That is, both entail a conception of educational rights that entails a relationship to access that remains problematic for ensuring those rights in educational practice. For my purposes, there is an additional problem that arises from these two positions that is relevant for the examination to follow below. Both positions have been developed in the absence of clear definitions of rights, access, LRE, and inclusion in the law, and scholars on both sides of the debate have indicated the significance of this fact (Cosier et al., 2013; Doyle & Giangreco, 2013; Imray & Colley, 2017; Smith, 2007; Smith, 2010; Yell & Bateman, 2020). I interpret these positions to have effectively produced a dichotomy, or either/or scenario, within inclusion scholarship that shapes how the empirical problem is conceptualized as a problem and potentially resolved through scholarship in support of changes to the law and/or educational practice.⁷ This dichotomy has produced a kind of stalemate in the inclusion literature with new scholarship often retracing earlier positions that have been part of the inclusion debate to varying degrees since the 1930s (Osgood, 2005). This point signals the need for new conceptual tools to be applied to the issues described above to allow for the development of a middle ground between these two dominant positions. A further observation regarding the inclusion

⁷ My interpretation of the literature on this point is echoed in Hornby, 2015 and Marx et al., 2014. Also, Kauffman and Badar (2020) develop a distinction between bodily and instructional forms of inclusion that characterizes a similar divide within the inclusion literature.

literature, and one that suggests a potential path forward, is the limited use of philosophical resources in considering the meaning of educational rights and its relationship to access for students with disabilities. In particular, the inclusion literature has applied philosophy toward the development of ethical and political arguments, which signals the minimization of the ontological and/or epistemological dimensions of policy and its enactment in educational practices. In the following section, I will argue that the work of American pragmatist and educator, John Dewey, offers a potentially promising set of philosophical resources to be applied to the questions and issues raised above.

1.8 John Dewey, Pragmatism, and Inclusion

John Dewey was an American philosopher and educator that is most commonly associated with pragmatism and his work on progressive education. He is often listed with Charles Sanders Peirce and William James as one of the founders and chief exponents of the American pragmatist tradition. Broadly put, pragmatism takes our social practices seriously and theorizes on the basis of them (Bacon, 2012) in an effort to reexamine the meaning and social significance of metaphysical concepts and questions that have traditionally dominated the Western philosophical tradition (e.g., truth, knowledge). While the pragmatist tradition does not reflect a unified doctrinal position (Bacon, 2012), there are several themes that are of central importance in the work of many pragmatist philosophers. These notably include the historical contingency of truth and objectivity (fallibilism), the rejection of metaphysical foundations for knowledge and human social life, and the importance of linking philosophical concepts with their effects on our everyday social and institutional practices (Misak, 2007). For my purposes, I will argue that Dewey's theories of education and the student represent philosophically productive

ways to examine aspects of the empirical problem developed above. I will introduce and provisionally develop Dewey's ideas in these two areas below before moving into a chaptered outline of the remainder of my examination.

Dewey viewed education as the principal vehicle through which a society reproduces itself by shaping and enabling its younger members to participate in its central cultural practices and traditions (Dewey, MW9). He used the term growth to characterize the central aim of education, by which he meant enabling students to learn how to learn from their own experiences through engaging with their immediate environments for their own purposes (Dewey, MW9). The aim of growth, for Dewey, placed an obligation on public schools to supply the conditions that enabled it for each student through careful attention to their educational needs, interests, and environments. One of Dewey's central criticisms of the traditional education of his day was that growth was misunderstood as a process of preparing or training students to participate in society in the future (Dewey, MW9). That is, education was misunderstood as something done to the student for reasons that do not necessarily align with their own interests, capacities, and goals. For Dewey, the principal problems reflected in traditional education were rooted in the ontology of the student.

Dewey argued over a century ago in *Democracy and Education* that the way that the student and their immaturity is interpreted represented the central point of departure for public education (Dewey, MW9). The immaturity of the student, for Dewey, was the fundamental condition of growth through education, and schools mistakenly interpreted this status comparatively with adulthood rather than intrinsically as a positive power of development and adaptation (Dewey, MW9). The effect of the comparative or privative

view of the student on educational practice is that it established the fully functional adult as “an ideal and static end” that informs both the meaning of educational progress and the goal of public education in total (Dewey, MW9, p. 48). By contrast, Dewey argued that growth is not something done to the student in the sense of “pouring knowledge into a mental and moral hole which awaits filling,” but rather it is something the student actively and positively does (Dewey, MW9, p. 48). For my purposes, Dewey’s position makes clear that a conceptualization of the student both precedes and governs educational practice, and effectively changing the latter requires a prior revision to the former.

Using Dewey’s position as a point of departure, I will argue that the empirical problem developed above can be plausibly explained by examining two key philosophical assumptions implicit within educationally relevant disability law. These philosophical assumptions collectively express an ideal and liberal conception of the student that functions to govern the distribution of access to students with ID in educational practices. The principal way that the liberal conception of the student does this is by grounding the value and use of educational evaluations in educationally relevant disability law as the foundation for determining how and why access is distributed by IEP teams, and in what sense this distribution serves to ensure the educational rights of students with disabilities. This point can be provisionally demonstrated through a brief look at the conceptual contours that I understand to characterize the liberal conception of the student. Contemporary liberal theory, following Immanuel Kant and John Rawls, views the individual as conceptually distinct from its material contexts, experiences, and ends, which is a position that Michael Sandel (1992) has characterized as the “unencumbered self” (p. 18). The liberal individual is further characterized by an ideal of instrumental rationality

that enables it to evaluate, choose, and pursue its own ends (Gauthier, 1992). The combination of these two points can be read to produce a view of the student that is both socially atomistic and reducible to its rational capacities that are empirically observable in agential acts. Furthermore, on a liberal view, the student is characterized as a being that is accessible to empirical science and its defining qualities are precisely those that educational assessments claim to measure. As such, the liberal conception of the student is a philosophical ideal that informs the value and use of educational assessments in educationally relevant disability law. More precisely, the liberal conception of the student functions as a kind of conceptual guarantor that educational assessments are both valuable and useful in the ways required by educationally relevant disability law to determine the educational needs and to distribute access to appropriate educational resources for student with disabilities.

The liberal conception of the student is uniquely problematic for students with ID because it suggests that educational evaluations reward precisely the skills of instrumental reasoning and independent functioning that this population often struggles to demonstrate. This point may plausibly explain why students with ID are consistently placed in more restrictive special education settings than other student populations and supports the findings reported by empirical studies that directly associate lower performances on cognitive evaluations with higher rates of separate placements (Doyle & Giangreco, 2013; Segall & Campbell, 2014; Wehmeyer et al., 2016; Wehmeyer et al., 2021; White et al., 2007). More significantly, it suggests that at its philosophical root, the presumed value and use of educational evaluations actually functions to prevent the inclusion of students with ID because both are predicated on a conception of the student that rewards a form and

degree of capacity that students with ID are often unable to demonstrate. Put plainly, educationally relevant disability law resists the inclusion of students with ID. It is for this reason that simply changing aspects of the law and educational practice are insufficient for improving the educational access and inclusion of students with ID because the legal and educational mechanisms that distribute access to educational resources continue to be grounded in conception of the student that remains intact.

To summarize, I have argued that an expanded use of philosophical resources carries promise for examining and potentially resolving the empirical problem developed above. In response, I have attempted to provisionally demonstrate the value of applying select aspects of Dewey's theories of progressive education and the student to explaining and potentially resolving an empirical problem as it specifically affects students with ID. If accepted, my position will provide a plausible explanation for this problem, as well as locate its cause within the philosophical assumptions implicit within educationally relevant disability law. Furthermore, my position will demonstrate the need for retheorizing how the student is conceptualized in policy as a viable way to address and potentially resolve this problem. Doing so may enable the development of educational policy and practices that better ensure the ER of students with ID through the provision of expanded access to general education resources and their associated benefits.

1.9 Chaptered Outline

My principal aim in Chapter One was to demonstrate the existence of an empirical problem that specifically affects students with ID, and that stems from the limited degree of access that this population receives to general education resources. I have argued that

this empirical problem raises important questions regarding the meaning of educational rights as they are established in educationally relevant disability law, its relationship to access, and its appropriate enactment in educational practices. A brief review of the inclusion literature revealed two central positions that interpreted educational rights in the sense of appropriate and equal access, respectively. I argued that there were significant problems with both views regarding their potential and actual implementation in educational practices as it concerned resolving the empirical problem for students with ID. I also identified a limited use of philosophical resources reflected in both positions and argued that an expanded use of philosophy in considering the ontological and/or epistemological aspects of policy may reasonably contribute to the examination and potential resolution of the empirical problem. Lastly, I argued that the work of John Dewey offers a set of philosophical resources that can reasonably be used for these purposes. In particular, I argued that Dewey's theories of education and the student indicate that how the student is conceptualized represents a central point of departure for educational practice. Using Dewey's position, I argued that the value and use of educational evaluations that govern the distribution of access to general education resources for students with ID can be plausibly understood to be grounded in an implicit and metaphysical conception of the student. This conception of the student is expressed in two key philosophical assumptions that function to posit the student as an atomistic, rational, and empirically accessible being that corresponds to the precise aspects of learning and development that educational evaluations claim to access and measure. As a result, students with ID receive less access to the general educational resources because the educational evaluations that govern the distribution of access value and reward forms of knowledge demonstration that

this population commonly struggles to demonstrate. Students with ID are thereby harmed by receiving less access to the educational resources that have been shown to be most beneficial to their learning and development. Considered together, my arguments provisionally demonstrate that the empirical problem can be plausibly explained through examining the philosophical assumptions implicit in policy, as well as demonstrate the need and potential benefits of retheorizing how the student is conceptualized in educationally relevant disability law.

In Chapter Two I will present a brief history of American special education and disability law that focuses on the relationship between access and evaluation. I will begin by providing historical context regarding the exclusion of students with ID from accessing educational opportunities in both the developing public education system and separate institutional settings. In particular, I will focus on contextualizing the historical use of educational evaluations for identifying ID and distributing access to educational resources for students with ID. I will then provide an overview of the historical events and development of educationally relevant disability law, and some discussion of its intended purpose of addressing the historical exclusion of students with ID from central aspects of American social and institutional life. Next, I will provide an overview of the special education process established in educationally relevant disability law with an emphasis on how it is designed to first determine educational need through the use of educational evaluations, and then distribute access to the appropriate educational resources accordingly. I will also develop and discuss some notable observations regarding the design of educationally relevant disability law regarding the retention and codification of the relationship between access and evaluation within policy. Next, I will develop an overview

of the effects of educationally relevant disability law on educational practices, legal decisions that pertain to access, and academic debates regarding the inclusion of students with disabilities. Lastly, I will provide an overview of aspects of the liberal philosophical and political tradition as it pertains to the ontology of the individual expressed therein. I will not expressly discuss the liberal conception of the student and what I understand its implicit and governing role in educationally relevant disability law to be here, but rather I will only provide the philosophical resources to be used toward the development of that position in the following chapter.

In Chapter Three I will conduct a philosophical policy analysis of educationally relevant disability law. I will develop an overview of aspects of educationally relevant disability law and argue that it establishes a specific conception of educational rights that governs the distribution of access to educational resources for students with disabilities. Specifically, I will argue that FAPE is the central substantive right around which all other procedural rights established in educationally relevant disability law are organized. The educational rights established in educationally relevant disability law are appropriately understood as both access-centric and empirically grounded in that they are ensured by first determining the educational needs of the student through the special education evaluation process, and then distributing access to the most appropriate educational resources to address those needs. Next, I will argue that this conception of educational rights places at least three specific demands on practitioners in order to ensure them in educational practice. I will then show that each of these demands are not met for students with ID, thereby demonstrating that the educational rights of this population are not ensured in educational practices. I will then use resources from John Dewey's work to argue that this

problem can be plausibly explained through an analysis of key philosophical assumptions implicit in educationally relevant disability law. I will begin by presenting a brief overview of Dewey's theory of the student and how it informed his criticisms of the traditional education of his day. Next, I will apply these insights in arguing that there are two philosophical assumptions implicit in educationally relevant disability law that combine to construct an implicit and liberal conception of the student that governs the distribution of access to educational resources in ways that are problematic for students with ID. If accepted, my argument will demonstrate the need to retheorize how the student is conceptualized in policy as one way of addressing and potentially resolving this problem.

In Chapter Four I will provisionally develop an alternative conception of the student, and then apply that idea to some of the central concepts and problems under examination. I will begin by applying Dewey's critique of the student that he associated with the traditional education of his day to the liberal conception of the student that I have associated with educationally relevant disability law. Next, I will draw on the insights developed through that analysis to provisionally develop an alternative conception of the student. I will then conduct a thought experiment by applying this alternative conception of the student to four key areas to examine how this alternative conception of the student would affect students with ID. These four areas will include disability theory, educational decision making, the conceptualization and enactment of educational rights, and the purpose of special education in contributing to the flourishing of students with ID. In the area of disability theory, I will consider the application of Dewey's ideas to the medical, social, and functional models of disability. My purpose will be to show that he would support the use of disability theory insofar as it serves to enhance the educational benefits

for students with disabilities in public school settings. In the area of educational decision making, I will argue that a Deweyan conception of the student serves to alter how access is distributed by expanding the factors of learning and development that are considered by IEP teams. Furthermore, the value and role of educational evaluations in informing IEP decisions will become more balanced in relation to other forms of learning and development, such as social, emotional, and vocational forms that are minimized within current educational practices. In the area of educational rights, I will argue that a Dewey conception of the student necessarily alters how we understand educational rights to be constituted and enacted in educational practices. In particular, I will draw on the work of Dewey and Beth Singer to argue that the concept of community and the interpretative hermeneutics inherent to it provides support for enabling local educational communities greater flexibility for interpreting and enacting the aspects of educationally relevant disability law that govern the determination of the educational needs of students with ID, as well as the distribution of access to educational resources in response. Regarding the purpose of special education, I will argue that a Deweyan conception of the student potentially alters how we understand special education law and practice as contributing to the flourishing of students with ID. That is, an alternative conception of the student can serve to alter the way that policy frames the purpose of special education as a set of educational resources and services designed to benefit students with ID.

In Chapter Five I will offer some brief remarks to conclude my dissertation project. I will begin by presenting a brief summary of the major points that I have developed across each chapter. Next, I will return to the example of Luke, who I briefly introduced at the beginning of the present chapter, to serve as an illustrative vehicle for considering how my

position might have affected his experience with the special education process. Finally, I will identify some major takeaways for the reader and some possible directions for the project going forward.

CHAPTER 2.

2.1 Introduction

The central goal of the chapter to follow is to present a selective institutional and legal history regarding access to educational resources for students with ID. My presentation of this history will focus on the relationship between access and evaluation as it has been enacted in educational practices and disability law both before and after the development of educationally relevant disability law. I will begin with a brief discussion of models of disability that will serve as a thin framework running through the chapter regarding the tension between different conceptions of disability as it appears in educational practices and disability law. I will show that prior to educationally relevant disability law, students with intellectual disabilities (ID) have been prevented from accessing educational resources since they began to emerge in institutional form in American society in the mid-19th century. Furthermore, I will show that prior to educationally relevant disability law educational evaluations were used as the central means through which public schools distributed access to education resources, thereby enabling and justifying the exclusion of students with ID. Next, I will develop a brief overview of educationally relevant disability law to show that one of its central purposes was to address and resolve the historical exclusion of students with disabilities from accessing public educational resources. Despite that purpose, I will show that educationally relevant disability law maintains the reliance on educational evaluations for distributing access to educational resources for student with disabilities in the form of updated language that principally includes the related concepts of free and appropriate education (FAPE) and least restrictive environment (LRE). Furthermore, I will argue that educationally relevant

disability law serves to codify the value and use of educational evaluations for the purposes of distributing access into federal law despite their historical use as a tool of exclusion that has negatively affected students with ID. Next, I will provide an overview of the central academic debates regarding access for students with disabilities that followed the enactment of educationally relevant disability law. I will argue that these debates reflect an inadequate consideration of the philosophical dimensions of educationally relevant disability law that is limited to ethical and political arguments. Lastly, I will develop a brief overview of select aspects of the liberal philosophical and political tradition that are foundational to the American legal and institutional traditions. I will argue that liberal philosophy advances specific ontological claims regarding the nature of the individual that are relevant to problematizing the relationship between access and evaluation established within educationally relevant disability law as it concerns students with ID.

2.2 Models of Disability

The ontology of disability became a serious question for scholars during the late 20th century. Central to this questioning was the philosophical assumptions that chiefly informed how disability was conceptualized and engaged with by institutions and the general public. The standard view of disability as an objective and quantifiable deficit that resides within the individual's body has become known as the medical model of disability (Smith, 2010). The medical model interprets disability as a negative feature of human appearance and/or functioning that ought to be corrected if possible (Goodley, 2017). Accessibility to empirical measurement is also a central feature of this model because it provides a scientific basis for the identification and treatment of disability (Simplican, 2015), and it enables the production of human hierarchies through direct comparison

between individuals and groups (Smith, 2010). On the basis of this model, institutions commonly assume what Jewell (2010) has described as a “solution-oriented” stance toward people with disabilities (p. 163). His point is evidenced in aspects of contemporary education practice that record copious data on student development and performance, which may later form the basis for special education eligibility and placement decisions that are designed to intervene upon and correct forms of educational disability. The medical model has been criticized for overemphasizing the individual, perpetuating stereotypical interpretations of human difference, and placing the burden of social and economic inclusion on people with disabilities (Rimmerman, 2013).

In response to these and other criticisms of the medical model, many scholars have developed alternative models for retheorizing disability with the intention of reframing common social interpretations of and institutional interactions with people with disabilities. A social model of disability is any model that locates disability in the interaction between an individual and their physical, social, and/or political environment (Jewell, 2010). On this view, disability is not an inherent feature of the human body, but rather is a constructed social and political status ascribed to forms of human difference (Imray & Colley, 2017). A central premise of most social models of disability is the mutability of social values and practices that are considered normal, which serves as the basis for the ascription of abnormality to values and practices that fall outside of those boundaries (Foucault, 1977). Early social models distinguished between impairment as a feature of human embodiment and experience, and disability as a characteristic of social experience that can follow from the effect of environmental barriers on an individual’s functioning (Oliver, 2009). Later social models incorporated the concept of disability into

blended Marxist and postmodern theoretical frameworks that view disability as a marginalized and oppressed identity group (see Garland-Thomson, 2005). Social models of disability exerted a strong influence on American disability law developed during the second half of the 20th century, such as educationally relevant disability law and the Americans with Disabilities Act (ADA). These and similar civil rights-centric laws were designed to protect people with disabilities from group-based discrimination, as well as to shift the burden of inclusion to social institutions by legally requiring them to identify and remove barriers that negatively impact people with disabilities (Blanck, 2020).

The purpose of this very brief overview of the medical and social models of disability is to provide a framework for my presentation of select parts of the history of American special education and disability law. This discussion is not meant to be exhaustive, as the polysemic and multivalent concept of disability would require many more pages to adequately cover. Despite that, I acknowledge the important role that defining disability has for the way institutional policies and practices have functioned, both historically and currently (Beaudry, 2020). Below I will show that the history of American special education and disability law can productively be understood as a transition from and combination of the medical and social models. This transition is particularly evident in certain forms of disability law, however, it is less evident in certain institutional domains and practices, such as special education in public schools.

2.3 History of American Special Education

The history of intellectual disability in America has been significantly shaped by the social traditions and institutions that it would inherit from Europe. In particular, Western

religious traditions and their eventual interaction with an emerging empirical science tradition would produce conflicting social practices regarding people with intellectual disabilities. Supernatural forms of explanation were common in medieval Europe that had their roots in the monotheistic traditions of the West. Both Old and New Testaments suggests that disability was a product of divine wrath and people with disabilities should be grouped with other social undesirables, such as prostitutes, while also suggesting that disability was an occasion to demonstrate divine healing and mercy, and people with disabilities were deserving of Jewish and Christian charity (Braddock & Parish, 2001). Intellectual disability became increasingly recognized as a distinct form of disability during the Middle Ages, however supernatural explanations continued to predominate during this era and people with intellectual disabilities were commonly viewed as demons and witches (Braddock & Parish, 2001). Naturalistic explanations for intellectual disability began to take shape during the Renaissance period with the development of early scientific theory and methods (Rimmerman, 2013). The emerging medical view of disability would combine with existing supernatural explanations for intellectual disability to produce a commingling of religiously driven oppression and charity with crude and ineffective medical treatments (Braddock & Parish, 2001; Rimmerman, 2013). The movement towards increasingly scientific and rationalist explanations for intellectual disability continued during the Enlightenment period, as both philosophers (e.g., John Locke, 1690) and empirical scientists (e.g., Jean Esquirol, 1838) produced influential work on the subject (Parmenter, 2001). Notably, the institutionalization of people with intellectual disabilities steadily increased in European nations with the emergence and eventual dominance of the medical view of disability. Both the treatment of the individual and the safety of the

community were often the primary reasons for the use and gradual expansion of this practice in Europe during this period (Braddock & Parish, 2001; Rimmerman, 2013).

Early American history was similarly marked by a mixture of mild social tolerance, religiously inspired charity, and medically justified institutionalization. Colonial and post-Revolutionary Americans predominately viewed people with intellectual disabilities with a mixture of compassion and humor (Trent, 2017). People with intellectual disabilities were not viewed as dangerous or a burden to the community, but rather as harmless village idiots that were deserving of public kindness and support (Trent, 2017). This view aligned with English Common Law that informed many early American social practices that interpreted people with intellectual disabilities as moral innocents that remained part of God's creation, and so were designated as beneficiaries of Christian charity (Trent, 2017). These and similar influences produced a restricted form of social inclusion whereby people with intellectual disabilities were met with a mild sense of religious and communal tolerance. It should be noted that this was far from a universal sentiment and practice in early America, as mental hospitals that segregated people with mental illness and disabilities from their respective communities were built as early as 1662 in Boston, 1773 in Virginia, 1824 in Kentucky, and 1852 in Pennsylvania (Braddock & Parish, 2001; Osgood, 2005).

2.4 Emergence of American Special Education

It was from this complex and conflicting context that American special education first emerged. Many histories of special education begin with the 19th century tale of Jean-Marc Gaspard Itard and the wild boy of Aveyron. As the story goes, Itard discovered a

teenage boy that had been living alone in the forests around Aveyron, and he undertook what is considered to be the first documented attempt to systematically educate a child with an intellectual disability (Gargiulo & Bouck, 2018). Itard would eventually abandon his work due to a lack of demonstrable progress, however, his student, Edouard Seguin, would become a prominent figure in both France and America through his own work in educating individuals with intellectual disabilities (Gargiulo & Bouck, 2018). Seguin would notably open the first institution in Paris dedicated to the education of children with intellectual disabilities, and he would later relocate to America where he established the American Association on Mental Retardation (Brue & Wilmshurst, 2016). He thought intellectual disability was produced through the flawed interaction between the body and the nervous system, which could be improved through a form of sensory-based education of his own design (Trent, 2017). Trent (2017) favorably compared Seguin's approach to educating students with ID to the well-known Jeffersonian view of education as a tool of individual development designed to facilitate economic and social inclusion. Seguin and his work would significantly influence the first generation of American special educators, such as Thomas Gallaudet and Samuel Howe, who adopted his view of education as a means of enabling people with disabilities to participate in the economic and social life of their communities.

Samuel Howe was a trained physician and notable advocate and educator of students with hearing and visual disabilities. The influence of Seguin's work led Howe to begin admitting students with ID to his school for the blind in 1847 (Trent, 2017). Harvey Wilbur, a teacher turned physician, would formally open the first special education school for students with ID in Barre, Massachusetts in 1848 (Braddock & Parish, 2001; Trent,

2017). The modest successes of these early efforts convinced other states to establish their own “experimental schools” for students with ID, beginning with Pennsylvania (1853), Ohio (1857), Connecticut (1858), Kentucky (1860), and Illinois (1865) (Braddock & Parrish, 2001, p. 36). The central goal of these institutions was to educate students with ID to enable them to be returned to their respective communities where they could become functional and productive members (Trent, 2017). This point is significant because it suggests that a major impetus for the formation of these institutions was a recognition that communal inclusion was predicated on demonstrating a certain form and degree of independent functioning. Furthermore, special education was used as a tool of intervention and correction for the purposes of inclusion, which is strongly suggestive of a medical view of disability.

The intended educational and social goals of these institutions were being compromised even as they were first being established. Economic hardship affected many American communities both prior to and immediately following the Civil War. This led to a recession in the job market that drastically limited the number of available jobs that students with ID might get to allow them to reintegrate into their communities (Trent, 2017). In addition, an important shift occurred regarding how intellectual disability was viewed by the professional and academic communities that influenced the role of these institutions in supporting people with intellectual disabilities. Professionals increasingly came to view intellectual disability as a pathological and hereditary condition that rendered people with intellectual disabilities susceptible to socially deviant behaviors such as crime and pauperism (Trent, 2017). As a result, the role of many of early special education schools shifted from educating for the purposes of communal reintegration and inclusion,

to providing institutional care for the individual and protection for the community (Braddock & Parish, 2001; Trent, 2017). The shift in how intellectual disability was viewed effectively produced a corresponding shift in institutional service models from education to institutionalization. Both changes served to transform the first system of special education for students with ID into a system of mental asylums. Furthermore, these asylums would continue to be built in America, as their numbers would expand to 25 by 1900 (Braddock & Parish, 2001) and 58 by 1923 with many states supporting at least two facilities (Trent, 2017).

States were beginning to develop systems of public education roughly around the same time that the special education schools described above were first being established. The first public school was founded in 1839 in Lexington, Massachusetts (Paterson, 2021) and the first compulsory attendance law was similarly passed in the state of Massachusetts in 1852 (Graham, 2005). Trent (2017) suggests that it was the adoption of similar compulsory attendance laws by other states following the Civil War that led to the establishment of special education programs in public schools. Despite the increasing existence of such laws, many states selectively enforced them (Trent, 2017) and even provided grounds to expel students with ID if an administrator or medical professional determined that they would not benefit from access to public education services (Osgood, 2005). Some cities such as Boston, New York, and Cleveland established separate special education schools for students with ID during the 1870s that were called “intermediate schools” or “schools for special instruction” (Osgood, 2005, p. 24). The first formal special education class opened in Providence, Rhode Island in 1896, and many cities rapidly followed suit as a total of 108 cities had special education classes by 1913 (Trent, 2017).

These classrooms have been characterized as “dumping grounds” (Osgood, 2005, p. 24) for students of various ages, backgrounds, and ability levels, which did not address the learning and developmental needs of the students placed there (Crockett, 2020). Despite that, this service model of special education continued to expand and it was reported that there were 108,440 classes specifically for students with ID in operation by 1948 (Osgood, 2005).

2.5 Intelligence Testing

An important reason for the rapid expansion of special education in public schools during this period was the development and widespread use of intelligence testing. The history of intelligence testing begins with Alfred Binet, a lawyer and scientist, who was commissioned by the French Ministry of Education to develop an empirical method for screening children for mental retardation to better enable public schools to educate them (Trent, 2017). Binet and a colleague, Theodore Simon, developed the Binet-Simon intelligence scales (1905) as the first empirical instrument for identifying mental retardation by using a series of progressively difficult tasks that could supposedly determine a person’s mental age and functioning (Brue & Wilmshurst, 2016). A child’s mental age could then be compared with their chronological age to allow for the diagnosis of mental retardation and its severity in the individual (Brue & Wilmshurst, 2016). It is notable that Binet was an anti-hereditarian that consistently maintained a faith in the power of education to improve the functioning of students with ID (Gould, 1996). Specifically, he argued that the results of his test should not be used to rank children, but rather should be used as a rough estimate of current functioning to guide educational practices for their benefit (Gould, 1996). Despite that, the influence of the medical view of disability is

clearly evident in Binet's use of empirical science to diagnose and subsequently treat disability through educational methods. Contemporary scholars often credit Binet with founding psychometrics and firmly establishing the medical view of disability in the educational domain by exerting a significant influence over the development of educational theory and practice during the 20th century (Parmenter, 2001).

Binet's work would be adapted and used by prominent members of the American eugenics movement that viewed intellectual disability as pathological, hereditary, and the source of significant social problems. Henry H. Goddard revised the Binet-Simon scales to produce an English version in 1910, which he would infamously use to test immigrants arriving from various parts of Europe at Ellis Island, New York (Brue & Wilmshurst, 2016; Osgood, 2005). Goddard would subsequently claim that most immigrants tested in the moron range of mental functioning (mild ID), which contributed to the public view that immigration and intellectual disability were linked (Osgood, 2005). Lewis Terman would develop his own version of the Binet-Simon scales in 1916 entitled the Stanford-Binet test that incorporated the first formula for determining IQ to allow for the direct comparison of mental functioning between discrete people (Brue & Wilmshurst, 2016). Terman thought his version of the test would enable mental testing to serve as a means of sorting the American population into their appropriate professional roles in a manner analogous to the society envisioned in Plato's Republic (Gould, 1996). Robert Yerkes, in collaboration with Goddard, Terman, and other notable eugenicists, developed two versions of the test entitled the Army Alpha (written) and Beta (pictorial) that were administered to more than 1.75 million American service men during World War I (Gould, 1996). The Army Alpha and

Beta were the first mass produced intelligence tests and were rapidly adopted by American businesses and schools following their use with the US military (Gould, 1996).

The use of intelligence testing in American special education provided a scientific basis for the identification of intellectual disability and the placement of students with ID in separate classrooms and schools. This is evidenced in the explosion of special education programs during the first three decades of the 20th century. By 1932, it was reported that over 75,000 students with ID across 483 cities in 39 states were being educated in separate classrooms (Osgood, 2005). Prior to the use of intelligence tests, the identification of intellectual disability and the placement of students with ID in separate classrooms and schools was predominately a subjective process that relied on teacher expertise and authority (Osgood, 2005). Further evidence is suggested by the rapid growth of special education training programs that specifically developed professional competence in administering and interpreting intelligence tests. The Training School at Vineland opened in 1909 and served as the first formal training site for special education teachers in the use of intelligence testing (Trent, 2017). Notably, Vineland was a major mental asylum whose chief director was Henry H. Goddard, who also served as the director of training at the Training School (Brue & Wilmshurst, 2016). By 1913, 72% of tests administered for special education were Binet-style intelligence tests and more than half of all personnel trained in their administration were special education teachers (Trent, 2017). Furthermore, intelligence tests were also commonly used during this period to identify gifted students for placement in accelerated or enriched programs that were informally called “Termin classes” (Osgood, 2005, p. 168).

The medical view of intellectual disability and the efficacy of educating students with ID in separate settings came under serious questioning beginning in the 1930s (Osgood, 2005). Despite that, the medical view of disability and the use of intelligence testing to determine which students were placed into separate special education settings continued to inform special education practices during the mid-20th century. Both the number of students with ID being serviced in separate special education settings and the number of special education teachers continued to grow during this period. Between 1948 and 1966, the special education population grew by nearly 500%, with the increase in students with ID from 86,960 to more than 495,000 accounting for a significant portion of that increase (Mackie, 1969 in Trent, 2017). Between 1949 and 1961, the number of special education teacher training programs increased from 22 to 140 (Osgood, 2005), and there were more than 29,200 special education teachers working with students with ID by 1966 (Mackie, 1969 in Trent, 2017). Separate residential schools also continued to grow during this period, in 1948 over 62,000 students with visual, hearing, and cognitive disabilities attended such institutions, which would expand to over 86,000 by 1958 (Osgood, 2005). Furthermore, intellectual disability continued to be principally defined on the basis of empirical measures of cognitive functioning (e.g., IQ scores) by authoritative sources during this period, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the American Association on Intellectual and Developmental Disabilities (AAIDD) (Brue & Wilmschurst, 2016). Considered together, the medical view of disability, the use of intelligence testing in governing access, and the role of special education services in remediating disability characterized the educational landscape for students with ID prior to the development of educationally relevant disability law.

2.6 History of American Disability Law

In this section I will provide an overview of the history of American disability law prior to the development of educationally relevant disability law. Similar to the preceding discussion, I will be using the medical and social models as conceptual reference points to convey the predominate conceptualization of disability expressed in the law and how that affected issues of access for people with intellectual disabilities. As previously noted, the spectrum of theory and practice provided by these concepts is more evident in the history of disability law than it has been in the history of special education. Indeed, Blanck (2020) has argued that American disability law has broadly followed a trajectory away from an unquestioned medical view to a committed social view that attempts to shift the burden of inclusion to society by directly engaging with social and institutional barriers that affect people with disabilities. Another significant feature of disability law during this period that I will address is its general absence from the domain of education, as the passage of the Individual with Disabilities Education Act in 1975 (hereafter, IDEA) was the first federal special education law. I will begin with a selective presentation and discussion of disability laws that emphasized the inclusion of people with disabilities in postsecondary settings. I will then transition to discussing laws that were specific to the educational domain that began emerging in select states after 1910 (Osgood, 2005). This section, combined with the previous one, will provide the reader with a basic understanding of the social, political, and philosophical forces that contributed to the development of educationally relevant disability law in the mid-1970s.

The earliest examples of disability laws in Western societies were designed to provide economic and social support for military veterans. This practice has been traced

back as far as Greek and Roman societies where it was common for pensions to be awarded to military veterans that acquired a disability on the battlefield (Braddock & Parish, 2001). The history of American disability law began in a similar vein, as the first federal disability law was the Civil War pension system established in the 1870s to provide support for veterans of the Union Army (Blanck, 2020). This system defined disability as an inability to perform independent work, and access to its associated benefits was governed by medical professionals who empirically assessed and verified the disability claims of military veterans (Blanck, 2020). This process is indicative of a medical view of disability because it is conceptualized as an objective condition residing in the material body that is discernible by medical professionals using empirical methods of diagnosis and treatment. Military veterans that had their disability claim denied were commonly stigmatized and interpreted as attempting to steal from the system, which is a consequence that particularly affected people with invisible disabilities that adversely affected cognitive functioning (Blanck, 2020). Another significant feature of the Civil War pension system was that it conveyed a specific view of inclusion as the capacity to perform independent work. The principal function of this system was to first identify individuals unable to work, and then augment their inclusion in the economic domain through the use of supplementary funding. Later disability laws would commonly use the terms rehabilitation and vocational to capture a sense in which their emphases lie in facilitating the inclusion of people with disabilities in the postsecondary domains of employment and economics.

American disability laws developed during the first half of the 20th century were similar to the Civil War pension system described above in how they conceptualized both disability and inclusion. The Smith-Sears Act of 1918 established a federally funded

vocational program designed to facilitate the return of military veterans of World War I to civil employment (Blanck, 2020). Two years later, the National Vocational and Rehabilitation Act of 1920 extended the programming established in the Smith-Sears Act to the civilian population (Blanck, 2020). The Social Security Act of 1935 established a system of benefits for people that were unable to work, including people with disabilities, which was subsequently amended in 1954 and 1972 to expand the eligible population to include workers that acquired a disability on the job and people with disabilities living in poverty (Blanck, 2020). In each of these Acts, disability is defined as a medical condition that specifically inhibits one's ability to satisfy the expectations of postsecondary employers. Furthermore, the principal function of each Act was to facilitate the inclusion of a disabled population by either rehabilitating their capacity for employment, or by augmenting their capacity to participate in the economic domain. Later disability laws will be characterized by the expansion of how both disability and inclusion were conceptualized and enacted in institutional practices.

2.7 Disability Law and Public Education

A significant feature of federal disability law during the first half of the 20th century was its overriding absence from the domain of education. A partial explanation for this absence is that public education is not mentioned in any of the foundational documents of the American legal system. Indeed, only the Tenth Amendment indirectly applies to public education, which relegated the responsibility for it to the individual states because it was not explicitly ascribed to the federal government (Yell, 2019). The first special education laws were established at the state level as special education became increasingly more common during the early 20th century, with New Jersey (1911), New York (1917), and

Massachusetts (1920) being among the first states to do so (Osgood, 2005). The movement to establish special education laws mandating access to public education services was not universally pursued by individual states. By 1930, only sixteen states had established special education laws (Gargiulo & Bouck, 2018), and all states had still not done so as late as 1975 with the passage of the first federal special education law (Osgood, 2005). There was great variance in these state laws regarding what they required school districts to actually do, and a 1949 report by special education scholar Elise Martens found that these laws commonly did not require classroom accommodations or program modifications for students with disabilities (Osgood, 2005). As previously noted, it was common for state level special education laws to be selectively enforced, as well as continue to allow school districts to legally deny access to public education students on the basis of disability (Osgood, 2005). This point is demonstrated in case law examples in which courts in the states of Massachusetts (1893), Wisconsin (1919), Ohio (1934), Illinois (1958), and North Carolina (1969) upheld the right of states to deny access to public education services to students with disabilities (Yell, 2019).

In contrast to the federal disability laws of this period, state level special education laws did not offer specific definitions of either disability or inclusion. Despite that, the educational practices that predominated at the time offer some idea of how these concepts were interpreted in the law and enacted in public schools. The continued use of intelligence testing to diagnose, categorize, and treat students through educational means during this period is indicative of a medical view of intellectual disability. Osgood (2005) suggests that the increase in students identified with a disability and special education programs to serve them observed during the 1950s and 1960s can be explained by continued

improvements to intelligence and psychometric testing that facilitated the diagnosis and categorization of students. It is less clear how inclusion was conceptualized in state level disability law given the widespread use of separate special education classrooms and schools, particularly with students with ID. As described above, the federal disability laws from the first half of the 20th century were designed to either rehabilitate or augment the inclusion of people with disabilities in postsecondary employment and economic domains. The growth of separate special education classrooms and schools during this period might be suggestive of a similar approach in which students with disabilities were rehabilitated in their academic and social capacities with an intention of returning them to general education settings. Such an interpretation is not supported by the academic and practitioner debates of this period, as the supposed benefits for the classroom teacher, nondisabled students, and general school administrative efficiency were commonly cited in support of removing students with disabilities from general education settings (Osgood, 2005). A more plausible explanation is that inclusion was conditional on the student meeting a minimal standard of capacity, or what Simplican (2015) characterizes as a “capacity threshold,” to be considered educable (p. 4). This interpretation is supported by the court-produced rationales in the case law described above, as the presumed inability for a student with disabilities to benefit from general education services was a common point provided in support of states’ rights to deny access to them (Yell, 2019). Considered together, early state level special education law was predicated on the medical view of disability and seemed to serve more as a barrier to inclusion rather than a source of institutional protections for students with ID and their families.

2.8 Challenges and Changes – The Road to Educationally Relevant Disability Law

Some central assumptions regarding the identification of students with disabilities and where they ought to receive public education services began to be challenged starting in the 1930s. The academic and practitioner communities began to question the predominance of the medical view of disability in the identification process, arguing that environmental factors such as poverty, cultural deprivation, and minority status contributed to student development and outcomes (Osgood, 2005). These and similar arguments would foreshadow the development of social models of disability that would become incorporated into federal disability and education laws in the 1970s. The standard practice of using separate classrooms and schools to provide special education services to students with disabilities similarly came under questioning. Concerns over the social effects of separating students with disabilities from their nondisabled peers, such as the stigma of labelling practices and the denial of social opportunities with peers, were being raised as early as 1945 (Osgood, 2005). Efficacy studies attempted to determine the effectiveness of special education practices by comparing student development and outcomes between students receiving general and special education services. Many of these studies were conducted between 1930 and the late 1960s that focused on students with mild intellectual disabilities and the results were inconclusive, but they generally failed to demonstrate the superiority of special education services and settings for educating students with ID (Osgood, 2005). These and similar academic debates signaled a rise in suspicion regarding the value of special education services and the effect they had on learning and developmental outcomes for students with ID. Furthermore, they indicated a deep and growing concern with special education practices related to access and evaluation and were a harbinger of the significant changes to follow.

The Supreme Court of the United States (SCOTUS) ruling in *Brown v. Board of Education* (1954) (hereafter, *Brown*) represented an important watershed moment in American social and political history. The civil rights movements of the 1950s and 1960s were primarily aimed at securing equality of opportunity for racial minority populations, particularly in institutional settings, such as public education (Yell, 2019). On May 17, 1964, SCOTUS ruled that state-maintained (*de jure*) segregation on the basis of immutable characteristics (e.g., race) represented a violation of the Equal Protections Clause of the Fourteenth Amendment (Yell, 2019). The immediate and sweeping effect that the *Brown* ruling had on public education law and practices regarding the racial integration of public schools is well known. For my purposes, it established an important legal precedent and argumentative roadmap that disability advocacy organizations and parents of children with disabilities would use to present their own legal challenges to educational law and practice (Blanck, 2020). The *Brown* ruling represented the first time that the equal protections doctrine was extended to a class or identity group (Turnbull et al., 2007 in Yell, 2019). Legal challenges brought on behalf of children with disabilities would broadly argue that they were a class or identity group that had been denied access to public education services either altogether or of similar quality provided to students without disabilities (Yell, 2019). The outcomes of these cases would become a significant factor in shaping the development of educationally relevant disability law and subsequent educational practice.

The bulk of legal challenges involving children with disabilities took place during the early 1970s. Between 1971 and 1975, a total of 46 right-to-education cases were brought before courts in 28 states, and access to either public schools or general education settings was the primary issue in all of them (Osgood, 2005). Two of these cases held

particular significance for the way that issues of access would be articulated in educationally relevant disability law that was undergoing development around the same time. *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania* (1971; hereafter, *PARC*) was a class-action lawsuit involving fourteen students with ID that argued that the state was in violation of the Equal Protections clause of the Fourteenth Amendment by denying access to public educational services to a class of students (Yell, 2019). The court ruled that children between the ages of 6 and 21 must be provided with a free and appropriate education (FAPE) regardless of disability status (Yell, 2019). *Mills v. Board of Education of the District of Columbia* (1972; hereafter, *Mills*) was also a class-action lawsuit involving seven students with various disabilities that advanced a similar argumentative line as *PARC*. The court similarly ruled that all children of schooling age must be provided with FAPE, and that public education systems in DC must factor in the costs of providing FAPE to students with disabilities and provide procedural safeguards for these students and their families (Yell, 2019). Both cases directly challenged the legal ability of the state to unilaterally determine access for students with disabilities by either placing them in separate special education classes and/or schools, or by denying them access to public education services altogether. Notably, the language of the court rulings in these cases would be adopted nearly verbatim by the drafters of educationally relevant disability law.

Two additional cases that took place during this period concerned the use of empirical assessments in determining eligibility and access to special education services for students with ID. *Diana v. State Board of Education of California* (1970; hereafter, *Diana*) involved nine children from Latin/Hispanic backgrounds that were identified with

intellectual disabilities on the basis of intelligence testing scores, and subsequently placed in separate special education classes (Osgood, 2005). *Larry P. v. Riles* (1972; hereafter, *Riles*) involved one African American child who similarly had been identified with an intellectual disability and placed in a separate special education class on the basis of intelligence testing results (Osgood, 2005). In both cases, the court ruled that the intelligence tests being used were culturally and linguistically biased, and so adversely affected the results and educational decisions made on the basis of them (Osgood, 2005). On the surface, both cases were directly concerned with aspects of the special education process that discriminated against students from racial minority groups. Upon further inspection, these cases raised important questions regarding the relationship between empirical methods of assessment and educational decision-making processes that function to distribute access to general education services for students with ID that would be taken into account by the authors of educationally relevant disability law.

To this point, I have attempted to show that educational practices and disability law prior to the development of educationally relevant disability law demonstrate a specific and ongoing relationship between access and evaluation. That is, educational evaluations were used as the central means by which public schools distributed access to educational resources for students with ID. I have frequently referred to the medical model of disability to make it clear that a specific conception of disability as an empirical fact underlies the value and use of educational evaluations in accessing and measuring disability for the purposes of distributing access. It should be clear from the brief history developed above that the relationship between access and evaluation was harmful for students with ID because they commonly did not receive access to vital educational resources. One of the

central goals that informed the development and enactment of educationally relevant disability law was to address and resolve the historical exclusion of students with ID from accessing public education resources. Below I will provide a selective overview of educationally relevant disability law that focuses on aspects that directly pertain to issues of access.

2.9 Federal Disability Law in Education

The development and passage of educationally relevant disability law was the culmination of decades of political advocacy, academic debate, and legal challenges to special education practices. As previously noted, the term educationally relevant disability law refers to two specific pieces of federal legislation that function to structure contemporary special education law and practice that includes Section 504 of the Rehabilitation Act of 1973 (hereafter, Section 504) and the IDEA. Below I will present an overview of educationally relevant disability law with an emphasis on the assessment and decision-making procedures that it establishes that function to govern the distribution of access to educational services for students with ID.

Section 504 prohibits discrimination against individuals on the basis of disability in publicly funded programs and activities (Blanck, 2020). It was designed to mirror the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 by establishing legal protections for a specific class or identity group within public institutions or programs (Yell, 2019). Despite being primarily a civil rights act, Section 504 does articulate some basic legal protections and services that align with similar provisions offered through the IDEA. Public schools are required to make their physical environments fully accessible to

both children and adults with disabilities, and school programs are required to make reasonable attempts to accommodate and include qualified students with disabilities (Yell, 2019). The law also places an affirmative duty on public schools to identify students with disabilities in order to provide FAPE, which may include the provision of specialized instruction, settings, and/or supplementary aids and services (Yell, 2019). Section 504 establishes a tri-partite definition of disability that requires an individual to (a) have a physical or mental impairment that substantially limits a major life activity, (b) has a record of such impairment, and/or (c) is regarded as having such an impairment to qualify for protection under the law (Yell, 2019). This definition is notable because it reflects a combination of medical and social views of disability in the sense that it is not simply having a disability that is at issue, but rather it must negatively and substantially limit functioning in at least one major life activity (e.g., learning) for an individual to qualify for protections and services under the law.

The IDEA was established to address the failure of the individual states to meet the educational needs of students with disabilities by establishing a standardized set of child and parental rights that govern the special education process in public schools (Yell, 2019). Broadly, the IDEA requires that all children in public schools between the ages of 3 and 21 that qualify as a student with a disability are afforded the protections and services outlined in the IDEA. Yell (2019) identifies eight specific legal provisions established under that umbrella that includes (a) zero reject policy, (b) identification and evaluation procedures, (c) requirement of FAPE, (d) requirement of LRE, (e) assistive technology requirement, (f) teacher training requirement, and (g) parental participation requirement. FAPE represents the central educational right and organizing principle around which these

provisions function because they are collectively designed to ensure the provision of FAPE on a case-by-case basis. More specifically, FAPE requires public schools to observe a series of procedural rights that broadly govern student evaluation, IEP development, and access to educational resources (Kauffman & Badar, 2020). These rights principally include providing access to a nondiscriminatory evaluation and eligibility process, the development of an IEP by an interdisciplinary team of stakeholders, and implementation of the IEP in the LRE that enables students with disabilities to be educated alongside their nondisabled peers to the greatest extent possible. Notably, the concept of disability is not explicitly defined in the IDEA, which requires IEP teams to determine eligibility on an individual basis within the narrow consideration of whether a disability negatively affects a student's educational performance (Yell, 2019). Similar to Section 504, the combination of medical and social views of disability are observable here, as disability is simultaneously viewed as an individual condition or state that is relevant insofar as it adversely affects educational functioning.

2.10 Two Observations Concerning Access

For my purposes, there are two observations that are important for understanding how educationally relevant disability law departs from previous special education practice and disability law concerning the issue of access. First, educationally relevant disability law reflects an increasingly social theorization of disability that requires public schools to incorporate environmental factors into determining LRE and supporting students with disabilities in general education settings. Blanck (2020) describes educationally relevant disability law as a set of “paradigm-changing disability laws” because they incorporate social views of disability to a much greater extent than previous disability laws, which was

intended to shift the burden of inclusion to the institution rather than the individual (p. 322). One way that this shift is observable is in the importance of educational functioning for determining whether a child qualifies for special education services. Special education practices prior to educationally relevant disability law were narrowly predicated on the empirical diagnosis of disability as something the individual either has or does not have. Under educationally relevant disability law, it is not enough to have a disability in the medical sense of the term, but rather it must adversely affect the educational functioning and performance of the child. A second way this shift is observable is in the LRE mandate that requires students with disabilities to be educated in general education settings to the “maximum extent appropriate” (IDEA § 1412 (a)(5)(A)). This mandate requires public schools to make a good faith effort to enable the inclusion of students with disabilities in general education settings through the use of supplementary aids and services, which can include augmenting and/or altering environmental factors. Furthermore, public school districts are required to maintain a continuum-of-placements (CAP) to afford IEP teams a spectrum of placement options to choose from that allow a combination of general and special education services and settings to meet the educational needs of the student (Crockett, 2020). Prior to educationally relevant disability law, students diagnosed with disabilities were commonly placed in separate settings without first attempting to support their needs in general education settings. Both of these points illustrate important ways that educationally relevant disability law is intended to produce special education practices that depart from those of the past by significantly expanding the factors and options under consideration as they concern the distribution of access for students with ID.

A second important observation is the continued relationship between access and evaluation in educationally relevant disability law. In one sense, this relationship is nuanced in positive ways that place clearer restrictions on how practitioners are expected to evaluate students suspected of having disabilities. Prior to educationally relevant disability law, it was common for special education eligibility and placement decisions to be made on the basis of a single assessment, such as an intelligence test. Indeed, this was one of the central complaints expressed by parents of children with disabilities during the Congressional hearings that preceded the passage of the IDEA, and a series of procedural rights were included in response to govern the evaluation and eligibility process as a result (Yell, 2019). Both Section 504 and the IDEA require public schools to provide access to a nondiscriminatory and individualized evaluation process to determine a child's eligibility for special education services, as well as determine what educational services and settings are required to provide FAPE (Yell, 2019). The IDEA established additional procedural rights for children and parents that serves to further structure the assessment process. For my purposes, the most important of these rights requires public schools to use a variety of evaluation tools, and the results of these tools must directly contribute to special education decisions, such as the contents of the IEP and determination of the LRE (Yell, 2019). The requirement to use multiple and varied evaluation instruments, as well as including the parent in all decision-making processes (IDEA § 1414 (d)(1)(B) and (d)(3)(A)), reflects a broader requirement to base access-related decisions on a wide range of information.

In a second sense, the continued relationship between access and evaluation in educationally relevant disability law is troubling. The history developed above makes it clear that educational evaluations served as the central means by which public schools

distributed and often denied access to educational resources for students with ID. Furthermore, the priority of educational evaluations for distributing access prior to the development of educationally relevant disability law was harmful to students with ID because it restricted and denied such access to vital social and educational resources. What makes this more troubling is that educationally relevant disability law actually serves to formally codify this relationship in the law. That is, American disability law at the federal and state levels did not formally require the use of educational evaluations for distributing access to educational resources prior to the development of educationally relevant disability law. This point serves to raise important questions regarding the priority of the biological basis for understanding disability in educational practice and disability law, and the treatment of empirical science as a neutral medium for accessing and measuring disability. Later in the chapter, I will argue that these and similar questions may be taken to indicate a shared grounding in the liberal philosophical and political tradition that is foundational for the American legal tradition.

2.11 Post-Educationally Relevant Disability Law

2.11.1 Special Education Practice and Access

The passage of educationally relevant disability law produced seismic changes for special education practice. It established federal civil rights protections for people with disabilities and articulated a series of substantive and procedural rights that reorganized special education practice for children with disabilities from ages 3-21. Furthermore, it standardized the special education process as it functions to distribute access to educational resources. Here I will provide an overview of how educationally relevant disability law

affected access to public education resources for students with ID, review select case law that have informed the meaning of some of the key legal concepts regarding access (e.g., FAPE, LRE), and present some key points from the academic landscape regarding the inclusion of students with disabilities in educational spaces and practices.

The passage of educationally relevant disability law immediately increased the number of students with disabilities that received access to both public education services and general education classrooms. Between the 1976-77 and 1985-86 SYs, the number of students with disabilities receiving special education services in public schools increased from just over 3.7 million to nearly 4.5 million, an increase of nearly 18% (Osgood, 2005). Furthermore, nearly 75% of all students with disabilities had access to general education services for at least a portion of the school day, with nearly 27% of those students attending general education classes full time (Osgood, 2005). As explained in the previous chapter, this increase in access was not observed equally across different disability groups. For example, more than 50% of students with ID continued to exclusively attend separate special education classrooms (Osgood, 2005).

The figures presented above reveal two trends in special education practice that have continued to the present day. The first trend is the continued growth of special education, as the number of students with disabilities has increased with each year. During the 1992-93 SY, more than 4.6 million students with disabilities received special education services (OSEP, 1995). The most recent OSEP (2021) report to Congress indicated that this number had increased to nearly 6.5 million students with disabilities during the 2018-19 SY. The second trend is the continued disparity in access to general education services provided to students with ID in comparison to students receiving special education services

under different disability labels. During the 1992-93 SY, it was reported that 39.8% of students with disabilities accessed general education services for at least 80% of the school day, 31.7% for 40-70% of the school day, and 23.5% for less than 40% of the school day (OSEP, 1995). Within that context, 7.1% of students with ID accessed general education services for at least 80% of the school day, 26.8% for 40-70% of the school day, and 56.8% for less than 40% of the school day (OSEP, 1995). In comparison to other disability groups, students with ID were the least included population for at least 80% of the school day, the third largest population for at least 40-79% of the school day, and the largest population for less than 40% of the school day (OSEP, 1995). The most recent OSEP (2021) report suggests that this disparity has grown, as only 16.6% of students with ID access general education services for at least 80% of the school day (2nd least), 27.9% for 40-79% of the school day (most), and 48.7% for less than 40% of the school day (most). Considered together, this information suggests that while educationally relevant disability law has significantly expanded access to public education services for students with disabilities, including students with ID, it has not been effective in expanding access to general education services for some disability groups. Below I will discuss the major reasons why this disparity in access for students with ID is problematic as part of my discussion of academic debates on the issue of integration/inclusion.

2.11.2 Case Law and Access

Blanck (2020) characterizes American disability law as “almost wholly statutory,” by which he means that federal and state laws provide a broad framework that courts of law and select institutions (e.g., Department of Justice) further constitute through the interpretation of these laws (p. 3). There have been several important legal challenges that

have produced court rulings that have functioned to clarify and substantiate key concepts established in educationally relevant disability law that pertain to the distribution of access for students with ID (FAPE, IEP, LRE). Put plainly, these legal cases principally concern whether a specific distribution of access through the IEP (which, includes LRE) succeeds in providing FAPE for the student in question. I will organize my presentation of the relevant case law by first discussing notable cases that broadly pertain to the contents of the IEP, and then discussing notable cases that more narrowly pertain to the determination of LRE.

2.11.2.1 FAPE and the Contents of the IEP

There have been two significant legal cases heard by SCOTUS regarding the contents of the IEP as it concerns the provision of FAPE established in educationally relevant disability law. The first such case was *Board of Education of the Hendrick Hudson School District v. Rowley* (1982; hereafter, *Rowley*), which was also the first special education case in US history to be heard by SCOTUS (Yell, 2019). The central issue in *Rowley* was whether the provision of FAPE required a public school district to provide the best possible education service, or a level that conferred reasonable educational benefits for a student with disabilities. The Court ruled that FAPE did not require the provision of the best possible educational service, but rather services had to be “sufficient to confer some education benefit” for students with disabilities (Rowley, 1982 in Yell, 2019, p. 165). This ruling established what has become known as the *Rowley* two-part test, which broadly holds that if (1) a school has complied with the procedures outlined in the IDEA and (2) the IEP is calculated to allow the student to accrue some education benefit, then FAPE has been provided (Yell, 2019). The legal principle expressed in this test has become known

as the “trivial or de minimis standard” because it predicates the provision of FAPE on the student accruing at least minimal benefit from the contents of the IEP (Yell, 2019, p. 168). *Endrew F. v. Douglas County School District* (2017; hereafter, *Endrew*) is a recent case brought before SCOTUS regarding the meaning of educational benefit as it concerns the provision of FAPE. In *Endrew*, SCOTUS rejected the *Rowley* standard in arguing that FAPE requires that the IEP enable the student to “make progress appropriate in light of the child’s circumstances” (*Endrew*, 2017 in Yell, 2019, p. 169). In effect, the *Endrew* ruling clarified the *Rowley* two-part test by establishing a higher standard of educational benefit by requiring educational teams to develop and implement an IEP that enables progress rather than simply benefit (Yell, 2019). For my purposes, both the *Rowley* and *Endrew* rulings are significant for the issue of access for students with ID because they require IEP teams to enable access to appropriately challenging educational services and settings that facilitate developmental progress. More specifically, they demand attention to the empirical effect that general and special education services and settings have on the developmental and learning outcomes of students with ID.

2.11.2.2 FAPE and the Concept of LRE

Here I will discuss four cases that have been significant for clarifying the legal meaning and educational practice of determining LRE as a part of the IEP development process. Recall that the IDEA establishes a preference (not requirement) for inclusion by proscribing that students with disabilities to be educated in general education settings alongside their nondisabled peers to the “maximum extent appropriate” (IDEA § 1412 (a)(5)(A)). More plainly, LRE pertains to determining the most appropriate setting(s) for the implementation of the IEP over the course of the school day, which can commonly

involve a variety of settings. Similar to the Rowley ruling, the cases described below developed conceptual tests for other courts to use in determining whether FAPE has been provided through the LRE determination under question.

The two most significant legal cases for shaping the legal and educational meanings of LRE were *Roncker v. Walter* (1983; hereafter, *Roncker*) and *Daniel R.R. v. State Board of Education* (1989; hereafter, *Daniel*). Both cases involved elementary-aged students with ID and the courts developed conceptual tests in determining if FAPE had been provided through the LRE determination that would influence future court decisions. The *Roncker* standard is a three-part portability test designed to determine whether the specialized services provided in special education settings can reasonably be transported and implemented in general education settings (Yell, 2019). The test requires a consideration of (1) the benefits of general and special education settings, (2) whether the student is a disruptive force in general education settings, and (3) the costs of providing general education services (Yell, 2019). The *Daniel* two-part test reflects a somewhat different emphasis that concerns the tension between the provision of FAPE and the preference for inclusion expressed in educationally relevant disability law. The court's ruling effectively rejected the *Roncker* standard in arguing that when the requirement to provide FAPE and the preference for inclusion are in conflict, then the provision of FAPE takes precedent (Yell, 2019). The two-part test developed by the court requires a consideration of (1) whether a student can be satisfactorily educated in a general education setting through the use of supplementary aids and services, and (2) whether a student would be integrated to the maximum extent possible if they were placed in a special education classroom (Yell, 2019). Subsequent courts have developed their own conceptual tests that combine aspects

of the Roncker and Daniel tests described above. Most notable among these later conceptual tests are the DeVries (1989) test⁸ that considers the conditions in which inclusion is not required to provide FAPE and the Rachel H. (1994) four-factor test⁹ that expands on the Roncker test by requiring a consideration of nonacademic educational benefits.

The various court rulings and conceptual tests described above indicate several factors that the courts view as necessary for IEP teams to consider when determining LRE. These factors principally include (1) educational benefit in general and special education settings, (2) effectiveness of supplementary aids and services for a student, (3) effect of a student on the general education learning environment, and (4) the cost of inclusion. For my purposes, there are two important items to note about these factors. First, LRE is not determined in a vacuum, but rather must incorporate practical considerations regarding the anticipated effects that an educational environment carries for the student. Second, the central role of educational evaluations for distributing access to educational resources established in educationally relevant disability law is not viewed as problematic by the courts. Both of these observations express the priority of empirically accessible aspects of student learning and development for informing special education decision making, and thereby ensuring the educational rights of students with disabilities through access-oriented concepts and mechanisms that include FAPE, the IEP, and LRE.

⁸ The DeVries test is designed to determine if/when inclusion is not required to provide FAPE through a consideration of (1) the student would not benefit from being placed in general education settings, (2) the benefits of special education settings outweigh the benefits of general education settings, and (3) the student has been disruptive when placed in general education settings (Yell, 2019).

⁹ The Rachel four-part test requires a consideration of (1) benefits of general and special education settings, (2) nonacademic benefits of interacting with nondisabled students, (3) potential effects on the teacher and other students, and (4) the cost of inclusion (Yell, 2019)

2.11.3 Academic Debates and Access

Scholars have continued to debate the issue of integration/inclusion following the passage of educationally relevant disability law. The themes raised in these discussions are both varied and important, and there are many issues that represent a continuation of discussions that have been ongoing since the 1930s. For my purposes, I will organize my discussion around the central findings of contemporary efficacy studies and provide an overview of the Regular Education Initiative (REI) movement that primarily took place during the 1980s and 1990s, but has continued to the present in scholarship that advocates for the full inclusion of students with disabilities.

2.11.3.1 Debate Over Empirical Scholarship on Inclusion

Following the passage of educationally relevant disability law, scholars have continued in their efforts to determine the value of special education services by attempting to measure its effects on the learning and developmental outcomes for students with ID. As described in the previous chapter, there is a substantial and growing body of scholarship that has demonstrated that significant academic and social benefits for students with ID are associated with increased access to general education services and settings. Additional studies have shown that separate special education settings can also reduce access to the general education curriculum (Soukup et al., 2007; Wehmeyer et al., 2003), social opportunities to interact with grade level peers (Carter & Hughes, 2005), and highly qualified instruction (Mason-Williams et al., 2017). Still further studies that have directly compared groups of students with ID in general and special education settings have reported better developmental and learning outcomes for students with ID in more

inclusive settings (Blackorby et al., 2007; Cole et al., 2020; Cosier et al., 2013; Dessementet & Morin, 2011; Oh-Young & Filler, 2015; Wagner et al., 2005). Considered together, these findings offer strong support for at least expanding access to general education settings for students with ID.

The empirical findings described above have not gone unchallenged, as some scholars have argued that the support these studies offer for inclusion may not be as strong as it appears to be. I will discuss two such challenges that I think form the core of the argument against the value of the empirical scholarship that supports inclusion. First, scholars have argued that contemporary efficacy studies commonly use study designs that are not intended to establish causality (Cook & Cook, 2020; Crockett, 2020; Imray & Colley, 2017). Specifically, it is argued that most of these studies are conducted as natural experiments that are not capable of isolating and determining the effects of specific features of the instructional and social environment on student development and outcomes (Cook & Cook, 2020). Further complicating matters is the illegality of conducting experimental design research in public schools given the legal restrictions that govern LRE established in educationally relevant disability law (Kauffman & Badar, 2020). Second, scholars have observed that contemporary efficacy studies often reflect an overriding commitment to ideological and political positions (e.g., separate is inherently unequal) (Kauffman, 1995; Kauffman & Hallahan, 1995; Kauffman & Badar, 2020). As a result, such prior commitments devalue empirical data in relation to such ideological positions and has encouraged a selective engagement with scholarship that supports contrasting positions (Kauffman & Hallahan, 1995; Kauffman & Badar, 2020). Both points are significant because they broadly call into question the value of contemporary efficacy research for

supporting substantive changes to educational policy and practices that concern the inclusion of students with disabilities.

Here I will explain why I think both points described above are mistaken regarding the strength of the support that contemporary efficacy studies provide for the use of inclusive educational practices for students with ID. I think the first point of critique mistakes inclusion as one variable among others rather than a series of variables that are situated in educational processes commonly conducted in general education settings. By contrast, separate special education classrooms often entail a different set of variables that are situated in different educational processes. The demand to isolate inclusion in this way in empirical research misrepresents the practice of inclusion as involving a constellation of variables and processes that are not easily separated out to allow for precise measurement. Furthermore, this point is used by critics to advance a non-sequitur by arguing that because the empirical scholarship fails to identify what it is about inclusion (e.g., the specific variable) that is beneficial to students with disabilities, then the view that the benefits of inclusion can be generalized is not empirically supported.¹⁰ Comparative studies, in particular, suggest otherwise by demonstrating that between two groups of students with approximate educational and functional support needs, the group that has the most access to general education settings and services has demonstrated better learning and developmental outcomes.¹¹ These and similar empirical findings allow us to reasonably

¹⁰ Put plainly, this argument confuses the issue of how inclusion works with the issue of whether it works. On my view, it is plausible to accept that contemporary efficacy studies broadly demonstrate that inclusion connotes consistent and predictable empirical benefits to the learning and developmental outcomes of students with ID, while also conceding that the specific variable(s) that are responsible for such benefits is thus far indeterminate.

¹¹ It is important to note that separating out the effects of a student's disability and variables associated with inclusion is not possible. The comparative empirical studies cited in the present examination claim to have studied groups of students with the same disability label and approximate educational and support

hold that inclusion carries measurable benefits for all students, which is a conclusion that is implicitly supported in the preference for inclusion that appears in educationally relevant disability law (IDEA § 1412 (a)(5)(A)).

The second point of critique is related to a larger debate regarding the relationship between science and the social and political context in which it occurs. There have been a wide number of scholars since the late 19th century that have rejected the absolutism and neutrality of science.¹² My intention here is not to take a position within that space, but rather to suggest that allowing science to be ideological is not problematic for evaluating empirical scholarship on inclusion as long as limits are placed on both science and ideology. That is, I think it is reasonable for science to acknowledge its historical and cultural embeddedness, but I would not reduce science to one political discourse among others (Matthews, 2008). Rather, I would assume a generally pragmatist position by framing science and ideology as tools whose value lies in the benefits that they produce for human life, while also recognizing that both have the capacity to do harm. For example, science has undoubtedly been beneficial to the flourishing of human life, but the history of education for students with ID described above indicates that it has also been used towards the irreparable harm of a large number of people. A second example is that liberal and democratic ideologies have greatly expanded access to public education in American but, again, the history presented above demonstrates that liberal and democratic systems have been used to exclude and deny specific groups of people from accessing public resources

needs. That is, students that could reasonably be placed in either general education or special education settings. The implication is that doing so functions as a kind of natural control on the effects of disability in determining the effects of inclusion on aspects of student learning and development.

¹² For example, see Barad (2007), Dewey (1978), Foucault (2003/1973), Kuhn (1962/2012), Latour & Woolgar (1986), etc.

and their associated benefits. I agree with scholars such as Smith (2010) that argue that science is inherently ideological, while also agreeing with scholars such as Kauffman (1995) that argue that science has been the most successful epistemological position for human life developed thus far. As a result, I think devaluing empirical findings related to inclusion on the grounds that they have been interpreted ideologically seems to reaffirm an incorrect conception of science as an acontextual and neutral tool. Furthermore, it supports the already dominant view that educational progress does not occur unless it can be measured using empirical instruments. Considered together, the second point of critique is based in a specific conceptualization of science and its relationship to ideology, and therefore incorrectly dismisses the empirical benefits of inclusion that contemporary efficacy studies show.

Here we might productively ask of the scholars that have advanced both points of critique discussed above whether and to what extent educational policy and practice should support the use of inclusion in the absence of empirical studies that satisfy their concerns. One possible response comes from Anne Donnellan (1984) who developed the principle of the least dangerous assumption to provisionally guide educational decision making in the absence of conclusive empirical data. She writes, “This criterion or standard asserts that in the absence of conclusive data educational decisions should be based on assumptions which, if incorrect, will have the least dangerous effect on the student” (Donnellan, 1984, p. 142). While she notes that this principle can be applied to a wide range of educational decisions that can affect different student populations, she specifically developed it for application in determining the LRE of students with Autism (Donnellan, 1984). When applied to the current discussion, this principle supports the use of inclusive educational

practices in at least three ways. First, the history of American education detailed above shows the harmful effects that separate special education practices have had on students with ID. Second, empirical studies have shown that a reduction in access to general education settings entails a related reduction in access to resources and opportunities that often cannot be replicated in separate special education settings (e.g., Carter & Hughes, 2005; Kleinert et al., 2015; Soukup et al., 2007; Wehmeyer et al., 2003). Third, this principle is echoed in educationally relevant disability law in its stated preference for the inclusion of students with disabilities “to the maximum extent appropriate” (IDEA § 1412 (a)(5)(A)). For my purposes, the least dangerous assumption offers support for inclusion by grounding educational decision making in what we know to be harmful to students, which is more clearly demonstrated in the empirical and historical literatures and therefore potentially more palatable to its critics. That is, it addresses the two points of critique discussed above by shifting which aspects of empirical scholarship inform educational decision making.

2.11.3.2 REI Movement and Debate

The REI movement was a significant debate that took place in academic circles that directly concerned the inclusion of students with ID that continued to spend large amounts of time in separate special education classrooms. While this debate primarily took place during the 1980s and 1990s, an article written by Lloyd Dunn in 1968 established a position that would become central to this movement two decades later. The central aim of Dunn’s article was to challenge the universal placement of students with mild intellectual disabilities in separate special education classes, particularly as this practice contributed to the disproportionate placement of students of color in these settings (MacMillan, Semmel,

& Gerber, 1995). Dunn questioned the utility of maintaining special education as a separate system of services and settings for students with ID, and broadly argued that general and special education should be combined into a single cohesive system that enabled all students to be educated in the same educational spaces (MacMillan et al., 1995). The call to combine general and special education systems would form the basis of the REI movement.

Proponents of the REI movement supported educational reforms designed to combine these systems through a combination of empirical, political, and ethical arguments. Scholars that supported the REI movement argued that special education practices maintained separate educational systems that falsely dichotomized types of students, the law emphasized a system of labeling and categorization that harmed students, and separate special education placements continued discriminatory practices of segregation that characterized earlier periods of public education (Osgood, 2005). These scholars further argued that the use of separate special education settings denied students with disabilities access to challenging academic curricula, opportunities to socialize with their grade level peers, and restricted the type and degree of support that can be provided to students in general education settings (Osgood, 2005). Opponents of the REI movement challenged this position by broadly arguing that these reforms were both impractical and could endanger the provision of FAPE for many students with disabilities. Some notable arguments include that teachers and schools are not equipped to provide FAPE for all students in the same setting, the educational needs of some students will interfere with the rights to educational services of other students, discontinuing labelling practices could result in students not receiving adequate educational supports and/or legal protections, and

the voices of students with disabilities, their parents, and K-12 practitioners were largely absent from REI research (Osgood, 2005). In brief, opponents of REI agreed that most people on either side of the issue supported providing access to general education services to students with disabilities to the maximum extent possible, but there are significant practical barriers that will negatively affect students if and when public schools are unable to implement the necessary reforms.

These and similar debates have continued to the present, as many scholars continue to apply many of the arguments described above to the contemporary educational landscape. The development of disability studies and critical disability studies has had an important effect on these ongoing debates. Scholars working in these areas have broadly argued that special education is a state-sponsored system of segregation that remains rooted in Enlightenment, Eurocentric, ableist, and eugenicist ideas that are collectively congruent with the medical view of disability and its project of eliminating disability (Smith, 2010). Furthermore, the full inclusion of students with disabilities in general education settings represents an important social justice issue and ethical imperative to be addressed through legal and educational reform (Imray & Colley, 2017; Kauffman & Badar, 2020). Some scholars have argued that key concepts in educationally relevant disability law that govern the distribution of access to general education services, such as LRE, have enabled the resegregation of public education by establishing ways of justifying the exclusion of student with disabilities (Connor, 2010; Smith, 2010). Other scholars continue to challenge these assertions by maintaining that special education as it is structured by educationally relevant disability law is designed to prioritize the provision of FAPE by determining educational need prior to considering the issue of LRE, and that adherence to fixed

philosophical positions negates the flexibility in the provision of educational services that the law is designed to allow (Kauffman & Badar, 2020; Travers et al., 2020). A central feature of this scholarship is pushing back on several key assumptions that characterize pro-inclusion scholarship. These assumptions include that all children are best served in the same settings, the ethical and civil rights obligations established in the law can only be satisfied through providing access to the same educational settings, and that disability is reducible to other forms of human diversity as it concerns educational practice (Colker, 2006; Imray & Colley, 2017; Kauffman & Badar, 2020). Both sides agree that some rethinking is in order concerning how public schools include students with disabilities, and how their inclusion is intended to benefit those students both in K-12 and postsecondary settings; however, there continues to be stark disagreement regarding precisely what that entails in theory and practice.

2.12 Liberal Philosophy and Educationally Relevant Disability Law

There are four notable observations that I will briefly discuss regarding educational practice, case law, and academic debates that followed the passage of educationally relevant disability law that are relevant to the present examination. First, not all students with disabilities have benefited equally from the preference for inclusion expressed in educationally relevant disability law. This point is particularly observable in the reduced access that students with ID have to general education resources in comparison to other student populations. Furthermore, contemporary efficacy studies show that this reduced access negatively affects the learning and developmental outcomes of students with ID that are primarily educated in separate special education settings. Second, the foundational role of educational evaluations for informing the special education process and thereby

distributing access to educational resources for students with ID is widely viewed as unproblematic in educational, legal, and academic circles. Furthermore, educational decision making as it concerns the distribution of access is appropriately restricted to the aspects of student learning and development that can be accessed and measured using educational evaluations. This issue reraises a concern noted earlier regarding the codification of the relationship between access and evaluation in educationally relevant disability law, which seemed to minimize or even ignore the historical effects that it has had on students with ID. Notably, both points considered together suggest that students with ID may not be provided access to the most appropriate educational resources for facilitating the best possible learning and developmental outcomes. Third, the philosophical aspects of policy are under-considered in academic debates, which reflect an emphasis on ethical and political themes that minimize or omit ontological and/or epistemological themes. This point is clearly demonstrated in the continued priority ascribed to medicalized understandings of disability in educationally relevant disability law that are accessible to empirical measurement, which serves to express ontological claims regarding the nature of the student, disability, empirical measurement, and educational processes.¹³ Furthermore, this point suggests that there is currently significant room for scholars to make meaningful contributions to the field of policy analysis by expanding their use of philosophical resources.

¹³ As previously noted the present chapter, my use of the medical and social models is limited to a framework or illustrative device to demonstrate how I think disability law and special education practice have changed since the mid-19th century. Here my concern is to problematize the use of educational evaluations in various ways, which can be described by linking it to the medical model of disability. Despite that, it is not my position that the problems that are the focus of the present examination are caused or can be resolved by reconceptualizing disability. That is not to say that such an argument is not plausible, but rather that it is simply beyond the scope of the present examination.

The significance of the observations described above are significant for understanding the empirical problem that was demonstrated in the previous chapter. Recall that the central issue was that students with ID receive significantly less access to general education settings and services in comparison to other student populations, which a growing body of empirical scholarship has found to negatively affect the learning and developmental outcomes of this population. This problem reveals the need to expand the access that students with ID have to general education resources to better enable them to benefit from their participation in public education. Below I will extend and nuance my articulation of this problem in response to the material presented in the current chapter.

Educationally relevant disability law maintains an essential relationship between educational evaluations, the educational rights of students with disabilities, and the distribution of access to educational resources. This relationship and its enactment in educational practices is problematic for students with ID in at least two important ways. First, it predicates the determination of educational need and subsequent educational decision-making regarding access on the empirical data generated using educational evaluations. This practice limits the identification of educational need to the forms of learning and development that are accessible to empirical evaluations, which further serves to minimize or omit other forms of learning and development, such as social, emotion, vocational, and situated/practical forms. As a result, students with ID are more likely to be placed in separate special education settings because educational evaluations emphasize forms of learning and development that they commonly struggle to demonstrate (e.g., cognitive, academic). Second, the provision of FAPE is grounded in the determination of educational need on the basis of empirical evaluation data. As a result, ensuring the

educational rights of students with ID and other students with disabilities requires practitioners to distribute access to educational resources on the basis of empirical evaluation data that privileges particular forms of learning and development. Furthermore, this practice mistakenly equates ensuring the educational rights of students with ID with continuing to limit their access to the educational resources that have been shown to confer the best possible educational benefits. Both points show that the determination of educational need, the distribution of access to educational resources, and the manner in which the educational rights of students with disabilities are meant to be ensure in educational practices are restricted to the information that is generated using educational evaluations.

The brief articulation of the problem developed above leaves open the question of what alternative options might plausibly be used to better distribute access to educational resources for students with ID. While my position will be developed more fully across the remaining chapters of my examination, I think changing how we determine educational need is essential for enabling a different and potentially better distribution of access to occur for students with ID. Making such a change would require an alteration to the foundational value and use of empirical evaluations ascribed to them in educationally relevant disability law, which would broadly enable practitioners to make educational decisions that are not strictly bound to the empirical data generated by such evaluations. Doing so could allow for at least four significant changes to occur to the special education process that directly affect the distribution of access for students with ID. First, it would enable practitioners to develop more robust conceptions of education need that take seriously forms of learning and development that are valuable for determining the most

appropriate educational resources to address them for students with ID. Second, it would allow for a more creative deployment of special education resources that are not explicitly tied to addressing a narrow view of educational need in empirically measurable ways. Third, it would allow for a greater consideration of the positive powers of the student in terms of their experiences, interests, and goals in determining how educational resources can be used to facilitate them. Considered together, altering how educational need is determined carries the potential to expand access to general educational resources for students with ID by changing how and why decisions are made according to educationally relevant disability law.

The remainder of the present chapter will reflect an effort to support the position that the problems described above, and their potential resolution lies in key philosophical assumptions inherent in educationally relevant disability law. As noted above, the inclusion literature reflects a general lack of attention to the philosophical dimensions of educational policy, and a near absence of consideration given to ontological questions and issues. In the previous chapter Dewey's work was used to argue that the way the student is conceptualized in policy is relevant for understanding how educational practice functions in response. Specifically, it was argued that the value and use of educational evaluations for distributing access to educational resources established in educationally relevant disability law can be plausibly explained by examining how the student is conceptualized in policy. This position suggests that retheorizing the manner in which the student is conceptualized in policy carries the potential to alter the way access to educational resources is distributed by altering the value and use of educational evaluations for informing that process. The foundation of the American legal tradition lies in the liberal

philosophical and political tradition it inherited from Europe. As such, my examination warrants a closer analysis of the ontological claims advanced by these traditions as they are relevant to identifying and analyzing an expressly liberal conception of the student. Below I will provide some background of the liberal philosophical and political tradition and develop an overview of the ontological contours that I understand to principally define the liberal conception of the student. My purpose in this final section is to fully equip the reader with an understanding of the key historical and philosophical concepts to access the policy analysis to be developed in the following chapter.

2.12.1 Liberal Tradition and the Conception of the Student

Educationally relevant disability law is rooted in the liberal philosophical and political tradition that can be traced back to the influential work of Immanuel Kant, John Locke, and John Stuart Mill. Broadly, liberalism is a political philosophy that reflects an attempt to deconstruct European feudal social order by combining Enlightenment principles and participatory political processes (Fawcett, 2018). Quintessential Enlightenment values, such as a commitment to secularism, the priority of rationality, belief in the unitary subject, and faith in both individual and social progress, would form the philosophical foundation upon which liberal political theory was built (Braidotti, 2013). Some additional concepts that would develop from the work of classical liberal theorists included self-sovereignty, rational self-interest, individual freedom, equality, and limited government (Mises, 2005; Smith, 2013). The liberal individual within classical liberalism was ascribed a rough equality in terms of social status and moral worth, and the liberal social and political context was characterized by non-interference to maximize individual liberty and freedom of choice (Anderson, 2017; Kymlicka, 1989). Additional concepts

have been developed over the history of liberalism that have come to define its contemporary formulation that includes tolerance and a respect for individual rights (Sandel, 1996), procedural fairness and equality (Rawls, 1992), and the freedom to develop and pursue one's own view of the good (Kymlicka, 1989). Each of the principles described above is intended to facilitate the "agency and empowerment of individuals" across all spheres of society (Ellerman & Gonza, 2019, p. 33), or what Kymlicka (1989) characterizes as the freedom to "lead our life from the inside" (p. 12).

For my purposes, liberalism begins from a series of ontological claims about the individual that can be traced back to its grounding in the Enlightenment principles noted above. One ontological claim is the prioritization of the individual in relation to various levels of social context, such as family, geographic or ideological communities, or the governmental state. This emphasis is most clear in classical liberalism as the concepts of self-sovereignty, rational self-interest, and individual freedom ascribe a clear priority to the individual (Smith, 2013). Contemporary liberalism, following Kant and Rawls, commonly assumes a deontological form in which the liberal individual is posited prior to its circumstances and its ends. The terms "unencumbered self" (Sandel, 1992, p. 18) and "social atomism" (Taylor, 1992, p. 29) have been applied by liberal scholars to critique the absence of contextual factors from this conception of the liberal individual. Liberalism posits the individual as unbounded by social context and political authority, which renders it capable of not only self-directing, but essentially self-creating through its choices and actions.

A second ontological claim is the priority of human rationality as the defining characteristic of the liberal individual and liberal society. MacIntyre (1988) describes

rationalism as a universal framework of intelligibility that historically served to displace the role of authority and tradition within Western societies and provide a “publicly accessible method for justifying beliefs and practices across all areas of life” (p. 6). Liberal rationality operates in a two-pronged way, with rationality denoting a central human capacity and a standard justification of human action. Gauthier (1992) touches on both aspects in characterizing the liberal individual as “fully rational” where rationality denotes the capacity to evaluate and determine one’s ends in order to be a “maximizer of expected utility” (p. 153). Rawls (1992) echoes this position by linking the “powers of reason, thought, and judgment” with the capacity for individuals to be “fully cooperating members of society over a complete life” (p. 197). In these examples, the liberal individual is characterized by a capacity for prudential reason in the service of individual and social action.

A third ontological claim that is closely related to the two described above is autonomy. The term autonomy broadly denotes the application of prudential reason in the formulation of one’s view of the good that informs the process of self-determination by structuring future choices and actions. Gauthier (1992) describes liberal autonomy as a process that is reliant on existing “preferences and capacity” that allow the individual to “alter given preferences by a rational self-critical, reflective procedure” (p. 157). He adds that autonomy amounts to a “process of choice, reflection, and modification of preference” through which the liberal individual independently develops their conception of the good that shapes both their actions and identity (p. 154). As such, we might characterize liberal autonomy as the application of prudential reason in preparation to act, similar to how we might envision a ship captain charting a course prior to weighing anchor.

A fourth ontological claim is agency, which can be characterized as the manifestation of the previous three principles in the form of rationally directed action in the world. MacIntyre (1988) described liberal agency as a three-step process that involves (1) reflecting upon and ordering a set of preferences, (2) expressing such preferences in predetermined public arenas, and (3) the ability to act upon those preferences so as to maximize utility. By extension, the individual is a liberal agent when the exercise of its prudential reason establishes the parameters that serve to guide immediate and future choices and actions in the world. If we reconsider the metaphor noted above, liberal agency can be understood as the ship captain weighing anchor and following the course of action that his prudential map charting established for him. Sandel (1998) describes liberal agency as a specifically voluntarist model of agency in which the “self is a willing subject that chooses its ends” (p. 58). By contrast, the ancient view of agency reflected in the work of Plato, Aristotle, and others is a cognitivist model of agency in which the self is conceptualized as a “knowing subject” that discovers rather than chooses its ends (Sandel, 1998, p. 58). As such, the liberal agent is a restricted self-author in the sense that it creates and recreates itself through the ongoing exercise of rational reflection and choice.

A fifth and final ontological claim is the accessibility of the liberal individual by the methods of empirical science. From its beginnings, liberalism was a progressive philosophical and social theory that rejected traditional forms of religious authority in favor of a secular and empirical cosmology (Braidotti, 2013). The development of a modern empirical science, in addition to the elevation of human rationality to an epistemic foundation, represented an important way that the Western world maintained the concept of truth despite the demise of God (Rorty, 1999). This development necessitated a faith in

the capacity for empirical science to reliably access and progressively explain the material world (Braidotti, 2013). The liberal individual is notably characterized by the independent exercise of prudential reason in self-directing their actions in the world. That is, the rationality of the agent is understood as a quality of their actions, and therefore it is externalizable and accessible to empirical instruments and measurement. This point is evidenced in the centrality of empirical science for informing modern institutional processes, such as those that characterize public education.

The ontological claims described above form the basis for what I have termed the liberal conception of the student. That is, the student is conceptualized as a socially atomistic and rational agent whose essential and defining features are accessible to empirical science. The liberal conception of the student does not explicitly appear in educationally relevant disability law, but rather implicitly underlies and informs the value and role of empirical assessments that, by extension, govern the distribution of access to educational resources for students with disabilities. The full articulation of my position and its use in the analysis of educationally relevant disability law will occur in the philosophical policy analysis to be conducted in the following chapter. For now, it is enough to have established the philosophical character and specific ontological claims that inform what I mean by the term liberal conception of the student.

2.13 Conclusion

To summarize, in this chapter I have attempted to provide historical, legal, and philosophical context as it concerns the relationship between access, evaluation, and the empirical problem identified in the previous chapter. The history of American special

education reveals that students with ID have had significantly less access to public education resources in comparison to other student populations. The use of educational evaluations in American special education has had a considerable and negative affect on the degree of access provided to this population. Early American disability laws did not offer much protection or support, as these laws were designed to facilitate the social and economic inclusion of individuals through efforts to physically and/or financially rehabilitate people with disabilities. Blanck (2020) argues that these earlier laws maintained the burden of inclusion on people with disabilities by requiring them to overcome their disability to participate in liberal society. The civil rights movements that occurred during the mid-20th century were motivated by the historical failure of individualistic liberal law to ensure equal protection and access to institutional goods and services for groups or classes of people. In response, many American laws since that point have established group or class-based protections and services, such as the antidiscrimination protections and specialized educational services provided in educationally relevant disability law. These and similar changes to American disability law have served to shift the burden of inclusion from the individual to society by establishing antidiscrimination protections and requiring institutions to identify and remove environmental barriers that function to exclude people with disabilities (Blanck, 2020).

The changes to American disability law described above have produced significant and positive effects in the way access to public education services is distributed to students with ID. Despite that, special education service statistics since the passage of educationally relevant disability law show that students with ID continue to receive significantly less access to general education services and settings in comparison to other student

populations. Furthermore, contemporary efficacy studies have shown that significant academic and social benefits are consistently associated with increased access to general education services and settings for students with ID. The contemporary academic debate continues to emphasize empirical, ethical, and political dimensions of special education practice as it concerns the issue of inclusion for students with disabilities. For my purposes, scholars engaged in this debate do not view the role of empirical evaluations in informing the special education process as problematic, and they have not adequately attended to the philosophical dimensions of public policy. At present, this debate seems to have stalled with both sides assuming entrenched positions that offer little prospect of improving access to general education resources for students with ID.

In the following chapter I will fully develop my position by conducting a philosophical policy analysis of educationally relevant disability law. In this chapter I have provided an overview of the central ontological contours that I will argue to characterize the liberal conception of the student. Using the work of John Dewey as a point of departure, I will argue that there are two key philosophical assumptions implicit in educationally relevant disability law that collectively express a liberal conception of the student that governs the distribution of access to educational resources by grounding the value and use of educational evaluations. Furthermore, I will argue that the liberal conception of the student is particularly problematic for students with ID because it prioritizes the use of educational evaluations that reward individualized and rational forms of learning and knowledge demonstration that this population often struggle to demonstrate. As such, students with ID are less likely to receive access to general education resources, which empirical studies have found to be harmful to their learning and developmental outcomes.

Furthermore, I will argue that retheorizing the liberal conception of the student can allow for meaningful changes to the law and educational practice to occur that better protect the educational rights of students with ID by expanding their access to the educational resources that are most beneficial to them.

CHAPTER 3.

3.1 Introduction

My central aim in the chapter to follow is to conduct a philosophical policy analysis of educationally relevant disability law. I will begin by returning to the brief review of the inclusion literature presented in chapter one in order to better situate the position that I will develop in the present chapter in response to the material presented in chapter two. Doing so will allow me to articulate my position as a middle ground in support of reforming current special education policy and practice, in contrast to the two dominant positions in the inclusion literature that call for either maximal or minimal changes to be made. Next, I will conduct a philosophical policy analysis that will consist of two major parts. The first part will demonstrate that the conception of educational rights that appears in educationally relevant disability law is not ensured in educational practice for students with ID. The second part will demonstrate that this problem can be plausibly explained through an examination of the philosophical assumptions that are implicit within policy. I discuss both parts of my policy analysis in greater detail below.

The first part of my policy analysis will begin by providing an overview of aspects of educationally relevant disability law in order to argue that a specific conception of educational rights is established there that governs the distribution of access to educational resources for students with disabilities. In particular, I will argue that the legal requirement to provide a free and appropriate public education (FAPE) is the principal substantive right which all other procedural rights are designed to fulfill in educational practices. Collectively, the educational rights established in educationally relevant disability law are appropriately understood as both access-centric and empirically grounded in that they are

ensured by first determining the educational needs of the student through the special education evaluation process, and then distributing access to the most appropriate educational resources to address those needs. Next, I will argue that this conception of educational rights establishes at least three conditions that must be met in order to ensure the rights of students with disabilities in educational practice. I will then show that each of these conditions are not satisfied for students with ID as a result of how educational rights are articulated in educationally relevant disability law and subsequently enacted in educational practices. My purpose in this part of the analysis will be to lay bare the legal rationale that shapes educational practices as they concern the potential inclusion of students with ID, and then show how that rationale fails on its own merits in practice.

The second part of my policy analysis will use resources from John Dewey's work to argue that this problem can plausibly be explained through an analysis of key philosophical assumptions implicit in educationally relevant disability law. I will begin by presenting a brief overview of Dewey's theory of the student and how it informed his criticisms of the traditional education of his day. Next, I will apply these insights in arguing that there are two philosophical assumptions inherent in educationally relevant disability law that combine to construct an implicit and liberal conception of the student that governs the distribution of access to educational resources in ways that are problematic for students with ID. My purpose in this part of the analysis will be to show that the previously examined legal rationale is grounded in philosophical position that can provide a plausible explanation for why the former fails to ensure educational rights of students with ID when enacted in educational practices. If accepted, my argument will demonstrate the need to

retheorize how the student is conceptualized in policy as one way of addressing and potentially resolving this problem.

3.2 Inclusion Literature

Recall that the concept of educational rights and how it has been variously articulated by scholars of inclusion was briefly discussed in chapter one. In particular, I was concerned with how these scholars have understood the educational rights of students with disabilities, the relationship between educational rights and access, and what sort of demands these ideas places on practitioners to ensure such educational rights in educational practice. Here I will attempt to update and nuance that discussion in ways that will be useful for the policy analysis to follow below.

It was shown in chapter one that the literature on the inclusion of students with disabilities indicated a broad agreement among scholars that educational rights as they are established in educationally relevant disability law essentially concerns the issue of access to educational resources (Braddock & Parrish, 2001; Downing, 2010; Frey, 2019; Kauffman & Badar, 2020; Ryndak et al., 2013). This point is what I characterized as educational rights as it concerns access in the broad sense. For example, Gartner and Lipsky (1987) stated that the central and abiding positive outcome of educationally relevant disability law was that it “established undeniable rights of students with disabilities to a public education” (cited in Osgood, 2005, p. 140). Furthermore, this conception of educational rights is echoed in the focus on access by the grassroots parental activism movement that occurred during the 1970s and 1980s that culminated in the PARC (1971/72) and Mills (1982) legal decisions that supported expanding access to general

education resources for students with moderate and severe disabilities (Downing, 2010; Osgood, 2005; Trent, 2017). The history of American special education was discussed at length in chapter two, which revealed extensive systemic discrimination that had long served to exclude students with disabilities from accessing public schools. The agreement of scholars of inclusion that educational rights entail access in the broad sense aligns with the principal purpose of educationally relevant disability law as pieces of anti-discrimination legislation designed to protect the rights of students with disabilities to access and thereby benefit from public institutions and resources. While scholars and practitioners have not always agreed that students with disabilities ought to have access in the broad sense, the civil rights issues that are central to this view are now widely accepted and valued within the inclusion literature.

Despite that broad agreement, it was also observed in chapter one that a sharp disagreement persists regarding the meaning of educational rights as it concerns access in a narrow sense. That is, while scholars may agree that the educational rights established in educationally relevant disability law ensures access to educational resources (broad sense), that leaves open the crucial question of which educational resources students with disabilities ought to have access to (narrow sense). Broadly construed, this disagreement obtains between scholars that support the view of educational rights as designating either appropriate or equal access (Marx et al., 2014; Travers et al., 2020). Scholars that support the view of educational rights as appropriate access also support FAPE as it appears in educationally relevant disability law and its enactment in educational practices (e.g., Fuchs & Fuchs, 1998; Imray & Colley, 2017; Kauffman, 2021). As discussed in chapter two, FAPE requires access to appropriate educational resources to address individualized

educational needs, which can include placing students with disabilities in separate special education classrooms. By contrast, scholars that support the view of educational rights as equal access generally reject FAPE and the view of educational rights as appropriate access (e.g., Jackson et al., 2009; Kliewer, Biklen, & Peterson, 2015; Smith, 2010). The reasons presented by these scholars are many and will be discussed in more detail below, but their general position is that FAPE penalizes students with disabilities and legitimizes their exclusion both from and within public school settings.

Both conceptions of rights described above entail a different relationship to access for students with disabilities and, by extension, serves to place different demands on practitioners to ensure such rights in educational practice. Scholars that support the view of educational rights as equal access have emphasized the political and ethical dimensions of educational policy and practice in arguing that any restrictions placed on the access to general education resources for students with disabilities represents a violation of their civil and educational rights (Jackson et al., 2008; Osgood, 2005; Smith, 2010). In opposition to this view, scholars have argued that it minimizes the practical demands placed on teachers (Crockett, 2020; Kauffman & Badar, 2020; Osgood, 2005), minimizes the potential harm done to students if their educational needs are not met in general education settings (Kauffman & Badar, 2020), omits the perspectives of students with disabilities and their parents (Imray & Colley, 2017; Osgood, 2005), and generally emphasizes inclusion as an ideology rather than a set of practical and effective strategies that benefit students (Imray & Colley, 2017; Travers et al., 2020). By contrast, scholars that support the view of educational rights as appropriate access often emphasize the pragmatic and legal dimensions of educational practice and policy by arguing that a single constellation of

educational resources cannot benefit all students, which thereby justifies providing access to different educational resources based on individualized student need (Imray & Colley, 2017). In opposition to this view, scholars have argued that special education practices maintain a false dualism between types of students (Osgood, 2005), serves to resegregate public education (Connor & Ferri, 2005; Connor, 2010; Smith, 2010), mistakenly views inclusion as an empirical issue rather than a moral issue (Biklen, 1992 in Osgood, 2005), and are inherently ableist and discriminatory in their treatment of students with disabilities (Baglieri et al., 2011; Smith, 2010). Furthermore, opponents of appropriate access have cited the historically questionable benefits of special education practices (Smith, 2010) and their potential role in denying students with disabilities access to the best educational resources (Oh-Young & Filler, 2015), which are both points that align with arguments that have been developed in the present examination. Considered together, the literature on inclusion reflects a dichotomous conception of educational rights regarding its relationship to access, and how educational practices ought to function in response.

I think both views of educational rights and the consequences each carries for the meaning of access for students with disabilities have merit. The view of educational rights as equal access reinforces the anti-discriminatory intent of educationally relevant disability law and supports the elimination of sources of actual and potential discrimination within educational policy and practice. The view of educational rights as appropriate access reinforces the theme of individualization and supports the continued development of educational expertise and practice to better enable it to meet the needs of all students. Both signal different yet related visions of education's better self in relation to a past that

proponents of both views agree was a source of significant barriers for children with disabilities and their families.

Despite such merits, I disagree with some of the central claims and recommendations that are commonly advanced by proponents of both views. It was argued in chapter one that the view of educational rights as equal access (full inclusion) tends to employ arguments that minimize the practical implementation of inclusive practices, and that minimize or eliminate the possibility of student or parental choice regarding LRE. Here I would add that I am in agreement with Kauffman and Badar (2020), Imray and Colley (2017), and others¹⁴ that have argued against the view associated with this position that special education is an ableist system of marginalization and oppression. During my career as a special educator, I have observed a great many counter examples to this claim in the form of students and families that have benefited extensively from their access to special education services. It was further argued in chapter one that the view of educational rights as appropriate access tends to be supported by arguments that minimize the significance of empirical scholarship that has shown the benefits of inclusion for students with disabilities (e.g., Cook & Cook, 2020; Crockett, 2020; Kauffman & Badar, 2020), and that reinforce that status quo regarding how special education placement decisions are made (e.g., Travers et al., 2020; Woods et al., 2020). Again, during my professional experience I have observed instances in which the special education process failed to appropriately place students with disabilities because such decisions are often grounded in a rigid system of evaluation and classification.

¹⁴ For example, see Anastasiou, Kauffman, Michail, 2014, p. 6; Imray & Colley, 2017; Kauffman, 1995; Kauffman & Hallahan, 1995; Kauffman, 2020; Kauffman & Badar, 2020; Matthews, 2008; Sasso, 2008

The previous two paragraphs support my contention that a middle position is needed to address problems associated with inclusion for students with disabilities. My position is aligned with scholarship that advocates for a middle position that is simultaneously critical of current special education policy and practice, while supporting the view that reform is preferable to dismantling the current system (e.g., Colker, 2006; Rozalski et al., 2010). In practice, an appropriate middle ground would entail the expansion of access to general educational settings and resources for students with disabilities, while retaining separate special education classes as an option that is used with less frequency. It was observed in chapter one that the inclusion literature reflected a limited use of philosophical resources, which were predominately used to emphasize political and ethical themes when used. This use of philosophical resources notably minimizes or omits ontological and/or epistemological themes that may be relevant to the examination of special education policy and practice. In particular, questions regarding the conceptual constitution of the student and its relationship to educational practice are mostly absent from the inclusion literature. Scholarship that has focused on questions related to the student has either done so in a way unrelated to the topic of inclusion (e.g., Fenstermacher in Hansen, 2006), or it has emphasized the structural construction of disability rather than the student to which it is subsequently applied (e.g., Baglieri et al., 2011; Garland-Thomson, 2005). In what follows, I will attempt to address this gap in the literature by using philosophical resources from Dewey's work to demonstrate the relevance of ontological themes within policy as they concern the student for thinking about the inclusion of students with disabilities in contemporary public schools.

3.3 Philosophical Policy Analysis

3.3.1 Overview of Educationally Relevant Disability Law

Educationally relevant disability law establishes both negative and positive senses of ER for students with disabilities. The negative sense of educational rights, or protection-from, is established in the prohibition expressed in Section 504 regarding discrimination against people with disabilities by any institution receiving federal funding (Yell, 2019). The positive sense of educational rights, or entitlement-to, is established in both laws regarding the right of all qualified students with disabilities to access a free and appropriate public education (FAPE) (Yell, 2019). Here I will focus on the positive sense of educational rights because the provision of FAPE directly concerns how access to educational resources is distributed to students with disabilities.

FAPE represents the principal substantive right established by educationally relevant disability law, as well as the organizing principle around which a series of procedural rights were developed and intended to support. The first purpose of the IDEA listed in the document is to “ensure that all children with disabilities have available to them a free appropriate public education” (IDEA § 1400 (c)(3)). FAPE must be provided at no cost to the family, meet the standards of the state educational agency, be provided by an appropriately accredited state school and, most significantly, it must be “provided in conformity with the individualized education program” (IDEA § 1401 (9)(a-d)). The IEP is a collaboratively developed document that articulates the special education services that will be implemented by the school in response to the educational needs of the student demonstrated through the educational evaluation process. That is, the IEP reflects a series of educational decisions made by a team of practitioners that determines appropriateness

on a case-by-case basis in response to the educational evaluation process. Indeed, Bateman (2017) echoes this point in writing, “the IEP is the core of a student’s FAPE and is the primary evidence of program appropriateness” (Bateman, 2017 in Yell, 2019, p. 161).

A central aspect of appropriateness is the determination of LRE that occurs at the end of the IEP development process. As noted previously, LRE is not explicitly defined within educationally relevant disability law (Cosier et al., 2019; Smith, 2010), but rather establishes a preferential mandate that students with disabilities will be educated alongside their peers without disabilities “to the maximum extent appropriate” (IDEA § 1412, (a)(5)(A)). The LRE mandate also prohibits the removal of students with disabilities from general education settings unless their educational needs cannot be “satisfactorily” met through the use of supplementary aids and services (IDEA § 1412, (a)(5)(A)). A number of scholars have argued that the absence of a clear definition of LRE in policy represents a significant barrier to improving the access that students with disabilities receive to general education resources (Cosier et al., 2013; Cosier et al, 2020; Doyle & Giangreco, 2013; Imray & Colley, 2017; Osgood, 2005; Smith, 2007; Smith, 2010; Yell & Bateman, 2020). Despite those concerns, the LRE concept does establish some important rights and requirements for educational practice that provides some idea of its intended meaning. The LRE concept establishes the presumptive right of students with disabilities to be educated alongside students without disabilities (Crockett, 2020; Rozalski et al., 2010). Furthermore, it establishes the expectation that public schools make good faith efforts to educate students with disabilities in general education settings through the use of supplementary aids and services (Wehmeyer et al., 2021). Notably, the LRE is considered a rebuttable right in that it can be denied on the basis of sufficient evidence (Crockett,

2020). These points suggest that the LRE is best viewed as a constellation of factors rather than a firmly defined concept or outline that is meant to enhance the flexibility afforded to IEP teams when determining the educational settings and services that address a child's educational needs.

A brief overview of the special education process will demonstrate how the central substantive right of FAPE is intended to be enacted in educational practice through a series of procedural rights (Yell, 2019). Here I will focus on the IDEA because it offers the most extensive articulation of these rights and how they structure the special education process. A child may be evaluated to determine if they qualify for special education services when an educational stakeholder (e.g., parent, teacher, etc.) initiates a referral for evaluation (IDEA § 1414 (a)(1)). This referral will require the public school system to conduct an individualized and non-discriminatory evaluation within 60 school days (IDEA § 1414 (a)(1)(A)(i)(I & II)). The assessments used in this process must evaluate the child in all areas of suspected disability and must reliably determine the child's present levels of functioning across academic and adaptive domains (IDEA § 1414 (3)(A)). An IEP team will use the results of the evaluation process to determine special education eligibility and collaboratively draft an IEP that identifies the educational needs of the child and the educational resources that will be used to support them (IDEA § 1414 (4)(A); IDEA § 1414 (4)(A)). The IEP team must consider several factors in the development of the IEP, which includes (a) child strengths, (b) parental concerns and input, (c) results of the initial or most recent evaluation, and (d) the educational needs of the child (IDEA § 1414 (3)(A)). As noted above, the IEP development process culminates in the determination of LRE, which requires the IEP to develop a description of the supplementary aids and services designed

to educate students with disabilities with their nondisabled peers, a description of the location(s) where special education services will be provided, and a rationale that explains why students with disabilities will not receive educational services in general education settings for any portion of the school day (IDEA § 1414 (d)(1)(A)(IV)(cc) and (V)).

3.3.2 FAPE as Access-Oriented

For my purposes, the brief description provided above reveals an intrinsic relationship between FAPE and access. There are two key points that I think serve to demonstrate this relationship. First, the special education process begins with a battery of educational evaluations that is designed to identify and articulate the educational needs of the student being evaluated. Educational need can be understood to constitute the meaning of appropriateness in the dual sense of justifying the need for specialized educational resources, as well as indicating which resources are to be deployed to support such needs. Second, the IEP will then be developed to specifically target and support the educational needs of the student. That is, access to the educational resources that are most appropriate for meeting such educational needs will be distributed through their articulation in the student's IEP. Considered together, FAPE and the procedural rights that collectively comprise the educational rights of students with disabilities established in educationally relevant disability law express an access-centric set of rights.

In addition to being access-centric, the educational rights established in educationally relevant disability law that concern students with disabilities reflect a notable empirical character. That is, FAPE and the procedural rights that facilitate its enactment in educational practice are principally informed by the empirical data generated through a detailed evaluation of the student that the IDEA requires to be conducted at the start of the

special education process (Woods et al., 2020). Furthermore, all subsequent decision making regarding the student's qualification for special education services, the development of the IEP, and the LRE determination are principally informed by this empirical data. Further support for this characterization of educational rights can be found in the legal standards established in federal court rulings regarding the provision of FAPE through specific LRE decisions that have focused on the consideration of empirical factors by IEP teams. These factors principally include (1) educational benefit in general and special education settings, (2) effectiveness of supplementary aids and services for the student, (3) effect(s) of a student on the general education learning environment, and (4) the cost of inclusion.¹⁵ Considered together, the educational rights¹⁶ established in educationally relevant disability law are predicated on a presumed value and use of educational evaluations to produce data that principally informs the educational processes and decisions that serve to enact these rights in practice.

To this point I have shown that the educational rights established in educationally relevant disability law bear a dual-character in that they are principally access-centric and empirically grounded. My interpretation of educational rights does not depart substantively from interpretations that appear in the inclusion and education law literature. For example, there are many scholars that identify FAPE, the IEP, and the LRE as the central legal provisions established in educationally relevant disability law (e.g., Blanck, 2020; Courtade & Pennington, 2018; Kauffman & Badar, 2020; Rozalski et al., 2010; Yell, 2019).

¹⁵ The relevant court cases include (1) *Ronecker v. Walter* (1983), (2) *Daniel R.R. v. State Board of Education* (1989), (3) *Sacramento City Unified School District Board of Education v. Rachel H.* (1994), and (4) *DeVries v. Fairfax County School Board* (1989) (Yell, 2019).

¹⁶ Note that hereafter my use of the term educational rights will be in reference to my reading of FAPE as an access-centric and empirically grounded set of rights. As such, specific rights (e.g., FAPE) will only be referred to where appropriate.

Further examples that demonstrate the centrality of FAPE in the interpretation of educational rights as they are established in educationally relevant disability law can be found in special education caselaw (e.g., Rozalski et al, 2010; Yell, 2019). The vast majority of legal challenges to aspects of educationally relevant disability law and special education practice have principally concerned the provision of FAPE as the basis for evaluating the appropriateness of the IEP and LRE decisions (Blanck, 2020; Crockett, 2020, Rozalski et al, 2010; Yell, 2019). My interpretation of educational rights reflects an emphasis on what I understand to be its essential elements, which are the distribution of access as it is conducted in educational practices on the basis of empirical data. Furthermore, my interpretation reflects an attempt to strategically narrow the discussion of educational rights and access by highlighting certain themes in FAPE in order to set up my analysis to follow below.

3.4 Consequences of Educational Rights for Educational Practices

Here I will develop what I view as the consequences that the conceptualization of educational rights developed above carries for educational practice. I will argue that this conception of educational rights establishes three conditions that must be met in order to ensure the rights of students with disabilities in educational practice. Briefly, these conditions include (1) that the empirical data produced through the educational evaluation process principally inform IEP decisions regarding access, (2) that the distribution of access should address and support all areas of a student's educational development, and (3) the empirical data and decisions made on their basis together must result in a distribution of access that produces the best possible learning and developmental outcomes for the student. Once I have articulated these conditions, I will then show that each one is not

satisfied for students with ID, thereby demonstrating that their educational rights are not ensured in educational practice. I will draw on my professional experience as a special educator to offer concrete examples that illustrate notable ways that I have observed each condition failing in practice.

3.4.1 Condition 1

One condition of ensuring the educational rights of students with disabilities in educational practices established in educationally relevant disability law is that the educational decisions that serve to distribute access to educational resources must be principally based in empirical data. That is, the use of educational evaluations that occurs at the outset of the special education process is intended to serve as the primary basis for determining the educational needs of the student, as well as inform all subsequent decisions related to the provision of FAPE through the distribution of access (Courtade & Pennington, 2018). This condition is evidenced in the requirement established in the IDEA that a review of existing data and the generation of new data (IDEA § 1414 (c)(1)(A-B)) through the use of educational evaluations are cited as the primary means that IEP teams are to be assisted in making all special education decisions (IDEA § 1414 (b)(2)(A)(ii)). The significance of empirical data for distributing access is underscored in the following passage from the IDEA:

In conducting the evaluation, the local educational agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information...that may assist in determining the content of the child's individualized education program, including information related to enabling the

child to be involved in and progress in the general education curriculum... (IDEA § 1414 (b)(2)(A)(ii))

I interpret this and similar passages in the IDEA to indicate that the provision of FAPE is grounded in the empirical data generated through the use of educational evaluations. By extension, a failure to conduct an appropriate student evaluation or to base educational decision-making on evaluation data would indicate a failure to provide FAPE.

My interpretation of this condition is further supported by scholarship that grounds the provision of FAPE in the data generated by the initial assessment process (Frey, 2019; Ysseldyke & Witmer, 2016 in Yell, 2019; Woods et al., 2020). Yell (2019) states that “the provision of FAPE is a direct result of the assessment process” because the two key purposes of assessment are (1) determining student eligibility for special education services and (2) determining student educational need to inform the IEP (p. 157). The intention behind this condition is to ensure that the concept of educational need and all subsequent special education decisions are grounded in and therefore justified by empirical evidence. This is an important way in which the authors of educationally relevant disability law sought to address the role of bias, both structural and individual, in informing educational decision making that affects students with disabilities. Put another way, science is presented in the law as a neutral medium that enables educational decision making that minimizes possible sources of discrimination.

The literature on the determination of LRE indicates that there are a variety of non-empirical factors that continue to exert a significant influence on the distribution of access for students with ID. These factors can broadly be sorted into three distinct categories that include (1) teacher factors, (2) student factors, and (3) educational resources. Studies have

shown that teacher-held assumptions/biases regarding disability label (Kurth et al., 2015), level of cognitive functioning in relation to other students (Doyle & Giangreco, 2013), and anticipated educational benefit (Agran et al., 2020) are significant factors that inform their LRE recommendations. These findings are particularly significant for students with ID because studies have shown that teachers frequently recommend separate educational placements for hypothetical students with cognitive disabilities (Segall & Campbell, 2014). Student characteristics have also been shown to be a significant factor in educational decision making, as stronger social skills (Lyons, Cappadocia, & Weiss, 2011), higher socio-economic status and lower urbanicity (Brock & Schaefer, 2015), and younger age (Harris & Handelman, 2000) have all been positively associated with a higher likelihood of inclusive placement. Furthermore, multiple studies have found that lower scores on cognitive evaluations are negatively associated with inclusive placement (Segall & Campbell, 2014; Wehmeyer et al., 2021; White et al., 2007), which, again, are findings that hold particular significance for students with ID. Studies have also linked the limited availability of educational resources (Herih, 2011), teacher shortages (Agran et al., 2020), and the financial incentivizing of separate special education practices in policy (Smith, 2007) as additional factors that are relevant to considering the distribution of access for students with ID. Following a review of the literature, Agran et al. (2020) identified six key factors that influence LRE decisions for students with ID that included (a) perceptions of competence and resulting placement policies, (b) economic and demographic stratification, (c) biases, (d) teacher preparation and experience, (e) lack of resources and capacity, and (f) absence of knowledge of current research.

From my professional experience, I have observed IEP teams engage in extensive discussion of factors unrelated to empirical evaluation data as it pertains to the prospective placement of students with disabilities. In addition to the factors described above, some additional factors of note include teacher experience, teacher caseload size and complexity, in-house programming options, and funding associated with different disability labels. I participated in an eligibility meeting for a middle school-aged student named Tony whose evaluation data suggested that he could have qualified for special education services under the labels of Autism or intellectual disability (ID). There was a debate within the eligibility team about which label should be adopted that primarily concerned factors that were not associated with the evaluation data. Specifically, some members of the eligibility team supported adopting an Autism label because the teacher was more experienced, the ID teachers had large and complex caseloads, and the label would generate more funding for the school to be used in the service of the student. The most significant drawback to adopting the Autism label was that the student would spend more time in separate special education settings because the school did not have a mild Autism program at that time.¹⁷ Through continued discussion, Tony eventually qualified for special education services under the label of ID to maximize his inclusion in general education settings, and avoid radically altering his current educational programming until the effects of his new IEP services could be observed. This example demonstrates the ease with which factors not directly associated with evaluation data and the educational need it is meant to inform when making decisions related to student placement. None of this is to say that practical concerns

¹⁷ Note that the parent had expressed resistance to having Tony change schools to attend a mild Autism program, which is why in-house programming options were primarily discussed by the eligibility team in this instance.

should not be discussed or are not relevant to placement decisions, rather that making them central moves away from the centrality of empirically grounded educational need that I have argued FAPE to be predicated on.

For my purposes, the significance of the findings and personal experience described above is two-fold. First, they collectively demonstrate that the empirical data generated through the evaluation process commonly do not provide the principal basis for subsequent educational decision making that governs the distribution of access for students with ID. Specifically, they show that practice commonly departs from the law in the sense of failing to determine educational need and to make educational decisions on the basis of it in the proscribed manner. Second, I think the failure of practitioners to principally ground educational decision making in empirical data suggests that the requirement to do so is unreasonable. That is, practitioners may already recognize that the determination of the educational needs of a given student cannot be completely or even primarily informed by empirical testing. These two points illustrate a significant tension within educational decision making that suggests that practitioners are torn between adherence to the law and endeavoring to develop a more robust conception of educational need by consideration factors in addition to those that are captured in the empirical data. Furthermore, this tension may partially explain the characterization of educational decision making advanced in recent studies as “murky at best” (Kurth et al., 2015, p. 18), “poorly understood” (Kurth et al., 2019, p. 5), and strongly influenced by factors “that have more to do with sociocultural and capacity factors than educational needs” (Agran et al., 2020, p. 6). Notably, Agran et al. (2020) described student placement decisions as being “frequently affected by variables unrelated to the individual needs of a student” (p. 8). That is not to say that all additional

factors being considered by IEP teams has equal value for the purposes of distributing access to educational resources for students with ID. For example, some of the empirical findings described above indicated that cognitive evaluation scores exert significant influence on placement recommendations and increases the likelihood that students with ID receive less access to general education settings and services. This point indicates a priority of individualized cognitive functioning for the determination of LRE, which is a topic that I will return to below.

3.4.2 Condition 2

A second condition entailed by the conception of educational rights established in educationally relevant disability law is the requirement that all areas of a student's learning and development are supported by the services that they receive through their IEP. This point is not expressly stated in educationally relevant disability law but can be reasonably inferred from three previously discussed requirements established in the IDEA that concern the provision of FAPE. First, the IDEA requires that a student must be evaluated in "all areas of suspected disability" (IDEA § 1414 (b)(3)(B)). Second, the purpose of the special education evaluation process is to determine the educational needs of the student (IDEA § 1414 (a)(1)(C)(i)(II)). Third, the purpose of the resulting IEP is to provide access to the most appropriate education resources to address such educational needs (IDEA § 1414 (d)(1)(A)(i)). It can be reasonably inferred from this process that there is an implied requirement that all areas of a student's learning and development be supported through the use of specially designed instruction outlined in the IEP. That is, the requirement to determine educational need implies a reciprocal requirement to support such need in educational practice.

My interpretation of this condition is supported by scholarship that has identified important ways in which current special education practices minimize or omit forms of student learning and development. For example, Frey (2019) identifies a priority toward decontextualized academic knowledge in current special education evaluation practices that minimizes or omits the consideration of contextualized and practical forms of knowledge. Multiple empirical studies have associated the continued use of special education settings with a reduction in access to environments that offer increased opportunities for social learning and development (e.g., Carter & Hughes, 2005; Foreman et al., 2004; Kurth et al., 2014; McLeskey et al., 2012). Furthermore, there is an extensive literature going back to the 1940s on the stigmatizing effects that special education labelling practices can have on the social and emotional development of students with disabilities (Colley & Imray, 2017; Kauffman & Badar, 2020; Osgood, 2005). For my purposes, the significance of the positions described above is that they collectively imply that other areas of student learning and development ought to be addressed through the deployment of special education resources. Considered together, they support my interpretation of the IDEA as establishing an implicit condition that requires all areas of a student's educational needs to be addressed in the distribution of access to educational resources that they receive.

There is reason to believe that this condition is not satisfied in practice because special education evaluation and inclusion practices reflect the priority of academic and cognitive forms of learning and development. This claim can be supported by two points. First, the foundational value and use of empirical evaluation data for the purposes of distributing access established in educationally relevant disability law indicates an essential

reliance on what can be measured using such evaluation methods and tools. Eligibility teams are required to use an individualized battery of educational evaluations that assess the student across various developmental domains (Yell, 2019), which are principally designed to measure individualized academic and cognitive forms of knowledge demonstration. This emphasis is also observable in standardized testing practices conducted in general education settings, as well as echoed in the history of American special education that relied on the widespread use of intelligence testing to distribute access to students with ID. Second, findings reported in the empirical literature on LRE for students with ID reveals a similar priority to be evident in the settings and services that this population commonly receives access to. As discussed in chapter one, students with ID spend significantly less time in general education settings in comparison to other student populations, with only 16.6% spending at least 80% of the school day there (OSEP, 2021). Empirical studies have found that students with ID have less access to the general education curriculum (Soukup et al., 2007; Wehmeyer et al., 2003) and a significant amount of their time in general education settings occurs during non-academic activities (Kurth et al., 2019). This information indicates that students with ID are most commonly receiving their academic instruction in separate special education settings. Consider that studies have also found that students with ID also receive reduced access to social opportunities (Carter & Hughes, 2005) and peer modeling (Kurth et al., 2016) that are essential for their social learning and development (Halle & Dymond, 2008; Jackson et al., 2008). Furthermore, scholars have long argued that special education labelling practices and the use of separate settings can stigmatize students with disabilities, thereby negatively affecting their social inclusion, learning, and development (Connor, 2010; Imray & Colley, 2017; Osgood, 2005;

Smith, 2010). These points demonstrate that there is a clear priority expressed in IDEA-based evaluation and decision-making practices toward academic and cognitive forms of learning and development.

I have observed many instances in which academic learning was prioritized over other forms of development during my career as a special educator. In particular, I have observed a near automaticity between a student qualifying for special education services in one or more academic areas, and the subsequent reduction of their access to general education settings being written into the resulting IEP. I served as the case manager for an elementary-aged student named Stacy that sometimes struggled to demonstrate academic knowledge on par with her grade level peers. Despite that, she thrived within the classroom social environment and loved coming to school each day to see her friends, many of whom she had known since kindergarten. Her IEP required that she spend part of her school day in separate special education settings to receive specialized instruction in core academic content areas (e.g., language arts, math). She was crushed that she had to leave her friends multiple times during each school day, and she withdrew socially and emotionally during the first few weeks of receiving IEP services. Stacy's response to the reduction of access to general education settings and her community of peers entailed by her IEP was alarming and heartbreaking to observe. In response, her IEP was rewritten to allow her to receive the majority of her academic services in the general education setting through the use of supplementary aids and services, and she responded positively in academic and social areas of her development. This example demonstrates a negative consequence that can result from distinguishing academic and social forms of learning, and subsequently prioritizing the former when making decisions that concern student placement. Doing so often fails to

consider the co-extensivity of academic and social development, emphasizes unidirectional interventions in contrast to the indirect benefits of immersion in opportunity-rich learning environments, and the developmental benefits of various forms of community within school settings.

For my purposes, the priority of academic and cognitive learning is significant for considering whether the second condition of educational rights is satisfied in practice. As demonstrated above, the aspects of learning and development that get measured and inform the use of special education resources in the IEP prioritize the identification and support of a specific type and form of skill acquisition. As a result, certain forms of student learning and development, such as social and vocational forms, are minimized or omitted from consideration during educational decision-making processes. This priority can be taken to exert a negative effect on the distribution of access for students with ID because educational evaluations and the emphasis of special education services reward precisely the individualized and rational forms of learning, development, and overall functioning that this population struggles to demonstrate. Furthermore, the existence and role of this priority in determining LRE may explain why students with ID are placed in separate special education settings more frequently than other student populations. Frey (2019) further argues that the decontextualized cognitive skills that are commonly assessed using educational evaluations do not reflect the full breadth of a student's knowledge, which makes the data less useful for developing appropriate programming and supports. It can be reasonably concluded from this brief analysis that the second condition of educational rights established in educationally relevant disability law is often not satisfied in practice because evaluation and distributive practices indicate that some areas of student learning

and development are not supported, nor are they equally valued and considered during the educational decision-making process.

3.4.3 Condition 3

A third condition entailed by the conception of educational rights established in educationally relevant disability law that I will discuss here is the requirement that the empirical evaluation data and educational decisions made on their basis together must result in a distribution of access that produces that best possible learning and developmental outcomes for the student. That is, the consequences that a particular distribution of access produces must be optimal for that student, otherwise such a distribution of access would not be appropriate in the sense of meeting their educational needs as indicated by the educational evaluation data. Similar to the second condition discussed above, this condition does not explicitly appear in educationally relevant disability law, but can be reasonably inferred from specific requirements regarding the IEP development process. The IEP team is required to develop a set of measurable annual goals and to track and report on the student's progress toward meeting them over the document's lifetime (IDEA § 1414 (d)(1)(A)(i)(II) and (III)). Furthermore, the IEP team is required to update and revise the IEP in response to a student's lack of progress towards meeting their annual goals (IDEA § 1414 (d)(4)(A)). Both requirements indicate that practitioners are accountable for student progress and a central way that they enact that responsibility in practice is by providing access to the most appropriate educational resources for facilitating such progress.

My interpretation of this condition is supported by scholarship that has identified various ways in which current special education practices do not confer maximal educational benefits for students with ID. For example, multiple empirical studies have

found that increased access to general education settings is associated with better academic learning and development outcomes for students with ID (e.g., Cole et al., 2020; Dessementet, Bless, & Morin, 2012; Ruppard, Fisher, Olson, & Orlando, 2018). Furthermore, multiple empirical studies have identified a similar association between increased access to general education settings and better social learning and developmental outcomes for students with ID (e.g., Carter & Hughes, 2005; Foreman et al., 2004). For my purposes, these studies collectively indicate that there is a degree of educational benefit that ought to be achievable through the deployment of special education resources, but currently is not being achieved because students with ID are not provided adequate access to general education settings. Additional support for my position comes from the case of *Andrew F. v. Douglas County School District* (2017) in which SCOTUS ruled that FAPE requires that a student receive access to appropriately challenging educational objectives and the resources that enable them to make educational progress (Kauffman & Badar, 2020; Yell, 2019). This legal ruling serves to raise the bar regarding the meaning of educational benefit from the standard of minimal benefit¹⁸ to one where progress is expected (Crockett, 2020). Considered together, these sources support my interpretation of the IDEA as establishing an implicit condition that requires the distribution of access to educational resources to produce maximal educational benefit for students with disabilities.

Similar to the conditions discussed above, there is ample reason to believe that this condition is also not being met in educational practice. A series of empirical studies were discussed in chapter one that compared the learning and developmental outcomes of

¹⁸ Note that the standard of minimal educational benefit was established in the case of *Board of Education of the Hendrick Hudson School District v. Rowley* (1982) that was also heard and ruled on by SCOTUS (Yell, 2019).

students with ID that received educational services in general and separate special education settings. These studies reported findings that showed that students with ID that had greater access to general education settings and services demonstrated better learning and developmental outcomes in comparison to students with ID that had less access to them. These findings include faster acquisition and better demonstration of literacy skills (Dessementet & Morin, 2011), faster reading ability in terms of words-per-minute (Blackorby et al., 2007), higher scores on language arts and math assessments (Cole et al., 2020; Cosier et al., 2013; Wagner et al., 2005), improved classroom engagement and increased communication interactions (Foreman et al., 2004), increased social interactions with nondisabled peers (Carter & Hughes, 2005), and an increase in the demonstration of self-determination skills (Hughes, Cosgriff, Agran, & Washington, 2013). Further support for these findings can be found in the extensive empirical literature on the effects of inclusive education for students with disabilities, which includes but is not limited to students with ID. Separate meta-analyses conducted by Carlberg and Kavale (1980), Wang and Baker (1985), and Oh-Young and Filler (2015) collectively reported that published scholarship dating back to 1932 has consistently demonstrated the benefits of general education settings and services for both students with ID and students with disabilities more generally. The significance of these findings is that they collectively indicate that many students with ID are not provided access to the educational resources that facilitate the best possible learning and developmental outcomes.

During my career I have observed a variety of effects that special education services can have on the learning and development of students with disabilities. Furthermore, I have typically favored increased access to general education settings and have frequently

worked with general education teachers and various administrators to increase opportunities for my students. As a middle school Autism teacher, I served as the case manager for a student named Chelsea who had transitioned from an elementary school where most of her school day was spent in a separate special education classroom. Her IEP emphasized the development of age-appropriate communication skills, particularly through the increase of verbal communication skills and a reduction in touching/grabbing when interacting with peers. Previous IEP teams had reasoned that Chelsea was not consistently demonstrating these and similar communication skills, therefore she ought to continue receiving much of her special education services in separate settings until she does. I worked to expand her inclusion in general education settings through a range of strategies in order to increase her access to peer modeling and social opportunities. She was able to quickly develop positive peer relationships and began demonstrating significant growth in her communication skills and social skills more broadly. As a result, her IEP was rewritten to expand her inclusion in general education settings by enabling her to receive some of her academic instruction with her grade level peers. While her positive response can be explained in multiple ways, I think Chelsea's social skills and behavior upon transitioning to middle school were a reflection of the limited access she had to general education settings while in elementary school. More specifically, that her then-current social skills did not indicate a non-response to special education services, but rather were at least a partial product of the social and environmental restrictions that accompanied her placement in separate special education classes. This example demonstrates that special education services and settings can affect student learning and development in unique

ways. As such, educators need to always be attentive to how various materials, strategies, and settings are affecting the students that they serve.

For my purposes, the findings and experiences described above serve to call into question whether the third condition entailed by the conception of educational rights established in educationally relevant disability law is satisfied in practice. Both make clear that students with ID are consistently placed in separate special education classrooms despite the findings reported by a significant and growing body of scholarship that indicates the overall superiority of general education settings and services for their respective learning and developmental outcomes. I think the upshot of these findings is that they reveal a two-part failure regarding how we distribute access to educational resources for students with ID, and in what sense we understand such access to be benefiting this population. First, students with ID are not provided access to the most appropriate educational settings and services given that the empirical findings described above indicate that different settings and services produce better outcomes for students that demonstrate similar educational needs. The significance of this point is echoed in studies that have collectively raised concerns regarding why students with ID and similar student populations continue to receive limited access to general education settings despite continued empirical findings that associate them with educational benefits (e.g., Agran et al., 2020; Kurth et al., 2015; Kurth et al., 2019). Agran et al. (2020) succinctly makes this point in writing, “Decisions about student placement are seldom consistent with what we know about the benefits of inclusion” (p. 8). Second, and the deeper concern, is that the empirically grounded special education decision-making process has functioned to distribute access to educational settings and services that are not the most appropriate

available for addressing the educational needs of students with ID. Consider also that the contents of a student's IEP must be "based on peer-reviewed research" (IDEA § 1414 (d)(1)(A)(i)(IV)), which indicates that the members of IEP teams should be at least somewhat familiar with the empirical findings described above prior to making LRE determinations. Considered together, these points indicate that the third condition of educational rights is not satisfied in educational practices for students with ID.

To summarize, I have argued that a specific conceptualization of educational rights is established in educationally relevant disability law that bears a dual-character of being access-centric and empirically grounded. I have also argued that this conception of educational rights serves to establish at least three conditions that must be met in educational practice in order to ensure them for students with disabilities. Briefly, these conditions require (1) that IEP decisions regarding access are made on the basis of empirical data, (2) the distribution of access should address and support all areas of a student's educational development, and (3) the distribution of access must also produce the best possible learning and developmental outcomes for the student. I have demonstrated that current educational practices fail to satisfy each of these conditions for students with ID. As a result, it can be reasonably concluded that the educational rights of students with ID are not ensured in educational practice. Furthermore, this conclusion raises significant questions regarding how educational rights are conceptualized in educationally relevant disability law, as well as how such rights structure the manner in which educational practices function in response to them. In particular, the central value and use of educational evaluations in determining educational need and the distribution of access to

educational resources seems particularly problematic for students with ID, which is a topic that I will take up in greater depth below.

3.4.4 Outline for the Remainder of the Chapter

If my position developed above is accepted, then the next issue to be addressed is why this happens. That is, starting from the claim that the educational rights of students with ID are not ensured in educational practice, we now require a plausible explanation for why this occurs. Over the remainder of the chapter, I will argue that this problem can be plausibly explained through an examination of key philosophical assumptions that inform educationally relevant disability law. Using the work of American philosopher and educator, John Dewey, I will argue that an implicit and liberal conception of the student informs the conception of educational rights established in educationally relevant disability law, as well as governs the way access is distributed through educational practices. Specifically, I will argue that the value and use of educational evaluations for informing the provision of FAPE is itself grounded in a liberal conception of the student that posits the student as an individualized and rational being that is accessible to such evaluations. This conception of the student has the effect of narrowing how we understand student learning and development, the factors that are considered in special education decision making processes, and in what sense LRE decisions are meant to benefit students with ID. By the conclusion of the chapter, I will have argued that a liberal conception of the student serves as the chief philosophical assumption that informs educationally relevant disability law, and which can plausibly explain why the educational rights of students with ID are not ensured in educational practice. Furthermore, this position will establish the need to

retheorize how the student is conceptualized in educationally relevant disability law as one reasonable way to address and resolve this problem.

3.5 Dewey, Pragmatism, the Liberal Tradition, and the Student

Here I will provide a brief overview of American pragmatism and Dewey's particular form of pragmatism to give the reader a sense of how he is situated within that tradition of thought. Next, I will provide an overview of Dewey's theory of education and how it informed his criticisms of the traditional education of his day. I will then show how Dewey's position is relevant to my examination and, in particular, how his analysis of the student can be fruitfully applied toward discerning two key philosophical assumptions in educationally relevant disability law that collectively express a liberal conception of the student that can plausibly explain my central problem.

As briefly explained in chapter one, American pragmatism is not a philosophical school based in a cohesive set of philosophical doctrines and is better viewed as a "tradition of thought" that shares some defining features (Bacon, 2012). Bacon (2012) describes pragmatism as a tradition of thought that begins from our social practices and philosophizes using the "resources it finds in and develops from our social practices" (p. vii). This emphasis on local and applied uses of philosophy serves to "shake up the kind of thing that philosophy is" (Calder, 2010, p. 53) by removing the traditional emphasis on developing metaphysical concepts or resolving timeless metaphysical questions that held limited use for social and political life. Traditional philosophical concepts, such as knowledge and truth, are reframed within pragmatism to mean historically and culturally situated and constructed concepts that do not represent or correspond to an essential reality. Knowledge

is reframed within pragmatism as knowing in the verbal sense of an activity that entails an ongoing process of testing and revising beliefs that function as provisional rules for human behavior (Almeder, 1986). The truth or acceptability of a set of beliefs lies in their effects on our social practices, and the degree to which they enable people and communities to better cope with environmental demands and problems. As a result, the pragmatist views all belief systems as fallible and therefore subject to revision, and the acceptance of a belief system is contingent on its effects on social practices rather than its correspondence to metaphysical foundations (Almeder, 1986). As Rorty (1991) notes, the pragmatist view of philosophy and some of its core concepts are not a “matter of getting reality right, but as a matter of acquiring habits of action for coping with reality” (p. 1).

John Dewey is commonly listed with Charles Sanders Peirce and William James as one of the three classic pragmatists that collectively founded the American pragmatist tradition. Dewey viewed pragmatism as an important corrective to the positions of Plato and Kant that were focused on determining metaphysical truths to serve as the foundation for social organization and functioning. He argued that a reconstruction was necessary in philosophy to shift its focus away from metaphysics and thereby render it more useful for addressing contemporary social problems (Bacon, 2012). Dewey’s reconstruction of philosophy often took the form of reconceptualizing its key concepts (Betz, 1978). Following Charles Darwin, Dewey sought to situate philosophy and naturalize many of its traditional concepts, such as truth, knowledge, reason, and the self/subject. He argued that the philosopher is not a detached observer of reality but participates in an historical and social context, and philosophy is best viewed as both a product of a particular social context and tool for adaptively coping with it (Bacon, 2012). Dewey further argued that a

philosophy that was more reflexive to the experiences and problems of daily social life required reciprocal shifts in how truth and knowledge were conceived. The “older” conception of truth, for Dewey, was identified with “authoritative dogma” and knowledge was a possession to be verified by “looking backward” to historically prior or atemporal views of truth (Dewey, MW12, p. 172). By contrast, the pragmatist “looks ahead” for the meaning of truth in the consequences that viewing it in one way as opposed to another carries for our social practices (Dewey, MW12, p. 172). By extension, pragmatic knowledge is never knowledge as such, but rather is transactional in the sense that is situated in some context and applied for some purpose that directs human action. Sleeper (2001) applied the term “transactional realism” to characterize Dewey’s epistemological position (cited in Sanderson, 2009, p. 709). Dewey described the “essential feature” of pragmatic knowledge as “the continuity of knowing with an activity...so as to enable us to adapt the environment to our needs and adapt our aims and desires to the situation in which we live” (Dewey, MW9, p. 353). Dewey used the term “warranted assertibility” to describe the provisional set of beliefs that people “steer by,” but that remain subject to revision on the basis of future experience (Bacon, 2012, p. 54).

Similar to his views on truth and knowledge, Dewey’s educational theory reflects an attempt to naturalize many of its major concepts and processes. For Dewey, education represented the principal way in which a society enabled its younger members to participate in its central cultural and institutional life (Dewey, MW9). He understood the defining features of American culture to include democracy and empirical science, which reflected the kind of social embeddedness, communal cooperation, and experimentalism that also characterized his understanding of pragmatism. That is, he viewed democracy and

empirical science as modes of social problem-solving and adaptation that enable different societies to cooperatively engage with their contemporary problems (Dewey, MW9). The principal business of education, for Dewey, was to teach children to become increasingly adaptable in both their personal and public lives. Growth was the term that he used to characterize the ongoing process of learning, development, and adaptation that one undergoes through their own experience. For Dewey, growth was predicated on both the immaturity and plasticity of the child, which “designates a positive force or ability, the power to grow” (Dewey, MW9, p. 48). Below, I will explain the central role that Dewey’s conception of growth played for both his criticisms of the traditional education of his day and his positive articulation of what educational practice ought to consist of.

Dewey developed an extensive critique of the traditional education of his day that spans multiple books and essays. Put broadly, he argued that traditional education was too focused on transmitting skills and truths that were relevant in societies of the past, rather than equipping children with skills to create new truths that are relevant to both contemporary society and their own individual purposes. The root of the problem in traditional education, for Dewey, was what he described as a “false idea of growth or development” in which it was interpreted as “movement toward a fixed goal...instead of being an end” in itself (Dewey, MW9, p. 56). In a practical sense, this includes what we might take as common features of educational practice, such as a formal curricula, the organization of students by age and/or ability, and a clear connection with learning skills relevant to specific postsecondary domains (e.g., college, employment). While he acknowledged that the imposition of general and fixed ends upon the educational process could take many particular forms, he was principally concerned with the privative

conception of the student produced through a comparison with adulthood (Dewey, MW9). Dewey argued that the practice of “regarding childhood comparatively instead of intrinsically” functioned to establish adulthood “as an ideal and standard” or “static end” of the educational process (Dewey, MW9, p. 48). Furthermore, the ideal of adulthood functioned to conceptualize the student as an inherently privative being defined by “a mere lack” or absence of positive powers of knowledge and capacity (Dewey, MW9, p. 47). Dewey demonstrated this point by identifying three different ways that growth in traditional education was mistakenly predicated on a privative conception of the student. These examples included growth variously misunderstood as a “process of preparation,” an “unfolding of latent powers,” and the training of specific skills or “powers of accomplishment” (Dewey, MW9, pp. 60-61, 66). For Dewey, each of these views is problematic because growth is interpreted as something that is done to the student for reasons not their own, rather than an activity that they actively engage in for their own purposes (Dewey, MW9). By extension, the content and sequence of education is represented as a process of correcting the privative immaturity of the student “by pouring knowledge into a mental and moral hole which awaits filling” (Dewey, MW9, p. 57).

Most notably, for Dewey, traditional education fundamentally excluded the student’s positive powers, direct experiences, immediate needs, and developing interests and goals from educational practice. Instead, the content, sequence, and purpose of education were determined in advance of particular students, a feature that Dewey considered antithetical to what educational practice ought to consist of. He writes, “The meaning of...a truly humane education consists in an intelligent direction of native activities in the light of the possibilities and necessities of the social situation” (Dewey, MW14, p. 70). I think this

passage is particularly representative of Dewey's theory of education and I will unpack some of its central terms for the reader. Dewey's concept of intelligence signified a naturalized conception of reason as a process of organizing habits of thought and action in response to experience (Dewey, MW14). The phrase 'intelligent direction' applies this concept to education by framing learning as an experimental process that requires students to learn from experience, but also "learns to learn" from that experience (Dewey, MW9, p. 51). Dewey often argued that students were incorrectly defined by an absence of knowledge, capacities, and interests, and they already possessed these things at an early age. The phrase 'native activities' signals Dewey's view that the educational process should begin from what students already knew, could do, and were interested in doing going forward (Dewey, MW9). Dewey thought that learning, like experience, was intimately bound to context in the sense that learning was always situated somewhere and for some purpose (Dewey, MW9). The phrase 'social situation' indicates this sense of learning as an inherently localized and practical concept whereby students learn by engaging with particular problems within particular environments. Taken together, these concepts trace around Dewey's central educational concept of growth, which he meant to signify the positive capacity or plasticity to provisionally form habits of thought and action in response to experience (Dewey, MW9). The educational process, for Dewey, has no goal outside of growth in the sense of enabling students to organize their powers so as to ensure further growth throughout their lives (Dewey, MW9).

3.6 Applying Dewey to the Present Examination

For my purposes, Dewey's position makes clear that a conception of the student both precedes and governs educational practice. That is, I read Dewey as arguing that the

purpose of public education and its central processes can be understood as a response to the way the student is conceptualized. As a result, any attempt to alter aspects of educational practice must first revise the underlying conception of the student that informs and structures such practices. Using Dewey's position as a point of departure, I will argue that there are two key philosophical assumptions implicit in educationally relevant disability law that collectively express a liberal conception of the student. Next, I will show that a liberal conception of the student is discernible in key aspects of the special educational evaluation process, and so serves to ground the value and use of educational evaluations that govern the distribution of access to educational resources for students with disabilities. I will then show how a liberal conception of the student is uniquely problematic for students with ID and can plausibly explain why the educational rights established in educationally relevant disability law are not ensured in educational practice for this population. If accepted, my argument will indicate that retheorizing how the student is conceptualized in educationally relevant disability law represents one plausible way of addressing and potentially resolving the central problem being considered here.

It was argued in chapter two that the conception of the student expressed in educationally relevant disability law was specifically liberal in its philosophical dimensions. I will briefly summarize that discussion here before explaining how a liberal conception of the student is relevant to my examination of educational rights and access for students with ID. The American legal tradition is rooted in the liberal philosophical and political tradition that can be traced back to the works of Immanuel Kant, John Locke, and John Stuart Mill. The liberal tradition derives from Enlightenment values and principles that include a commitment to secularism, the priority of rationality, belief in the unitary

subject, faith in individual and social progress, and the political and moral value of individual rights (Anderson, 2017; Braidotti, 2013; Kymlicka, 1989). For my purposes, the liberal tradition entails a series of at least five interrelated ontological claims about the individual. The first claim is the prioritization of the individual in relation to various levels of social context such as the family, geographic or ideological communities, or the governmental state. This claim is clearly expressed in the classical liberal concepts of self-sovereignty, rational self-interest, and individual liberty (Smith, 2013), as well as deontological forms of contemporary liberal theory that posit the individual prior to its circumstances and chosen ends.¹⁹ The second claim is the priority of human rationality as the defining characteristic of the individual. This view can be reasonably traced back to the Greek tradition and is also clearly expressed in contemporary liberal theory that characterizes the individual as a rational agent who is principally defined by its “powers of reason, thought, and judgment” (Rawls, 1992 in Avineri & De-Shalit, 1992, p. 197). The third claim is that individuals can and ought to exercise autonomy through the detached use of prudential reason in determining their chosen ends that will inform their future actions. The fourth claim and one that is entwined with the previous claim is that the actions of the individual can and ought to be rationally directed in the sense of being structured by a prior process of autonomous rational reflection regarding the selection of one’s ends. The combination of claims three and four constitutes individuals as self-determining agents in that individuals choose their ends in detachment from their social contexts, and then pursue those ends through their individually generated and rationally directed actions. The fifth and final claim that I will discuss here is the accessibility of the individual by the methods

¹⁹ The works of Kant and Rawls are most commonly associated with this position.

of empirical science. I view this claim as a result of the previous four claims in the sense that the rational processes that characterize the liberal agent are understood to manifest in their self-directed actions in the world. That is, the rationality of the agent is taken to be externalizable and therefore accessible to empirical methods. Considered together, these ontological claims produce a conception of the individual as a socially atomistic and rational being that is characterized by the capacity to self-determine and self-direct, and whose essential and defining features are accessible to empirical methods of measurement.

3.7 Philosophical Assumptions in Educationally Relevant Disability Law

3.7.1 First Assumption

Educationally relevant disability law is a recent product of the liberal philosophical and political tradition and so expresses a conception of the student that can be characterized by the conceptual features briefly described above. Here I will show how a liberal conception of the student is discernible in two key philosophical assumptions that inform the value and use of educational evaluations that are fundamental to the special education process and the provision of FAPE more generally. The first key assumption is that the student is conceptually constituted as an atomistic and rational being that is expected to function independently in proscribed ways. This point concerns what kind of being the student is taken to be and is observable in how practitioners are required to conduct educational evaluations under the IDEA. An eligibility team must develop an individualized battery of educational evaluations that assesses the student across academic and adaptive domains (Yell, 2019), which are principally designed to measure individualized and rational forms of knowledge demonstration. The Wechsler Intelligence

Scale for Children (5th ed.) and the Stanford-Binet Intelligence Scales are both evaluation tools that are commonly used by practitioners to measure students' cognitive functioning as part of the special education evaluation process (Gargiulo & Bouck, 2018). Both tests are principally designed to “assess cognitive ability and problem-solving processes,” and are comprised of a series of sub-tests that measure “verbal comprehension, perceptual reasoning, working memory, processing speed, quantitative reasoning, and general knowledge” (Courtade & Pennington in Gargiulo & Bouck, 2018, p. 3). The significance of the contents of these tests is that they are designed to measure the cognitive functioning of students in performing tasks in detachment from any meaningful social or practical contexts. This point suggests that the value of these tests and the usefulness of the data they produce is predicated on the assumption that the student is an essentially atomistic, rational, and independently functioning being. That is, what these tests are measuring is posited as essential qualities of the student prior to their use, which principally informs their value and role as the principal means of generating data that informs educational decision making about the student.

3.7.2 Second Assumption

A second key assumption and one that follows from the first is the accessibility of the rationality of the student to empirical methods of measurement. As noted above, the liberal tradition understands reason to be not only a quality of individuals, but also a quality of empirical events that are inferred back to the actions of the agent. That is, if we take agents to be rationally directed, then we can also take rationality to be externalizable and so empirically accessible. This point is clearly discernible in the tests described above where student responses are used to measure aspects of cognitive processing. Furthermore,

this point is also discernible in tests that are designed to access and measure students' adaptive skills and development, such as the Vineland Adaptive Behavior Scales and the Adaptive Behavior Assessment System (Courtade & Pennington, 2018). The tests described above claim to access and measure cognitive functioning, whereas tests of adaptive functioning claim to indirectly do the same through an assessment of student performance on non-academic tasks.²⁰ Furthermore, both types of tests are considered norm-referenced tests, meaning that they are designed to determine a deviation score in comparison to a normative sample of students (Courtade & Pennington, 2018). Notably, the value of norm-referenced tests can be problematic if the normative student sample does not reflect similar academic and adaptive characteristics to the student being assessed, which is relevant to their use with students with disabilities (Courtade & Pennington, 2018).

The problem that arises here is that rationality is conceptualized through comparison to other students, which notably fails to define rationality as a discrete quality of student behavior that is supposedly being accessed and measured. Many notable scholars have argued that rationality is problematically viewed as a 'what' in the sense of an object that is readily accessible to scientific methods. For example, C.F. Goodey (2016) argues that broad concepts concerning cognitive capacity, such as intelligence and rationality, function as "disguised comparatives" rather than signaling inherent qualities of an

²⁰ These assessments may seem like they measure situated forms of practical and social knowledge, but this is not the case in at least two ways. First, these instruments are not conducted through direct observation of the student performing practical and social tasks, but are Likert-style surveys that practitioners and parents complete regarding prior observations of the student. Second, these instruments prioritize the measurement of cognitive processing as it is demonstrable in non-academic tasks. As I will discuss below, the issue that arises with these tests and those that expressly claim to measure cognitive functioning is that rationality is not defined, and so what is being accessed and measured is left ambiguous.

individual (p. 72). Alastair MacIntyre (1988) has similarly argued that there is no such thing as rationality as such, but rather there are only “rationalities” that have been historically and variously constructed and performed in human social life at different times and places (p. 9). Wil Kymlicka (1989) further echoes this position in arguing that the liberal individual is incorrectly understood as an acontextual being, but rather one that is “immersed in a live context of social possibilities” (p. 164). The significance of these and similar arguments is that these tests are limited to determining the social acceptability of a child’s social functioning and not measuring some inherent quality that we might call the rational. This point indicates that what is rational is considered so precisely because it can be accessed and measured, which assumes in advance that what is being accessed and measured is the rational. A similar point is suggested in the work of Joel Westheimer (2015) where he argues that the value of standardized testing lies in the importance of being able to measure something, anything about student learning and development. Here I am extending Westheimer’s point by showing that the rational quality of the student and its accessibility through the evaluation of their actions is a philosophical assumption akin to a utilitarian-driven faith expressed in educationally relevant disability law.

I have argued above that there are two key philosophical assumptions discernible in the value and use of educational evaluations that can be traced back to what I have termed a liberal conception of the student that is implicit within educationally relevant disability law. These philosophical assumptions include (1) that the student is principally constituted as an atomistic, rational and independently functioning being, and (2) it is precisely these qualities of students that are accessible to empirical methods of measurement. Through discussion of commonly used evaluation tools, I have attempted to

show that these assumptions inform their central design, value, and use within the special education evaluation process. It is my contention that the assumptions identified here and that are traceable to a liberal conception of the student amounts to a metaphysics of the student. I use the term metaphysics because I understand this conception of the student to be both established in advance of (a priori) and external to the educational processes that it governs. Below I will explain the practical significance that the liberal conception of the student has for educational practices that affect students with ID and, by extension, provides a plausible explanation for why their ER are not ensured in educational practice.

3.8 Effects of the Liberal Conception of the Student on Educational Practices

The principal way that a liberal conception of the student affects students with ID is by restricting the aspects of student learning and development that influence the distribution of access to educational resources. I will identify and discuss three different ways in which this restricting effect occurs in educational practice. First, a liberal conception of the student restricts what aspects of student learning and development are evaluated during the special education process. This is significant because the special education process begins with a robust evaluation process that is designed to generate empirical data to provide the foundation for all subsequent decision making. As shown above, commonly used evaluation tools prioritize the measurement of cognitive processing as it is taken to be demonstrated in both academic and adaptive domains. Furthermore, these tests are commonly administered in isolation from social and practical tasks, which prioritizes independent functioning and the acontextual demonstration of these skills. This priority serves to minimize or omit the evaluation of forms of knowledge demonstration

that may not be as easily accessed using such evaluation instruments, such as social, emotion, situated and vocational knowledges.

A second and related form of restriction affected by a liberal conception of the student is observable in the special education decision making process that follows the evaluation process discussed above. To repeat, all phases of the special education process are principally informed by the empirical data generated through the evaluation process. This data is used to determine a student's specific educational needs, their eligibility for special education services, the content of their IEP, and the LRE in which the IEP will be implemented. As a result, the decisions made on the basis of such data will also necessarily reflect and reinforce the same priorities regarding which forms of learning and development are most relevant. That is, by grounding special education decisions in empirical data that prioritizes the measurement of a specific form and type of learning and development, those decisions necessarily share that priority. While the IDEA does allow for a consideration of factors that are not generated using educational evaluations, such as information shared by the child's parents, the priority of making data-driven decisions grounded in empirical data is unequivocally expressed in policy (IDEA § 1414 (c)(1) and (4)).

A third form of restriction affected by a liberal conception of the student is the role it has in shaping how we understand and value the effects of special education services. That is, how IEP teams view the use of specialized strategies, interventions, and settings as benefitting students with disabilities, and thereby warranting their inclusion in the student's IEP. The rationale that informs special education practice bears some important similarities to the medical field, which begins from the identification of a problem, the

selection and implementation of a treatment, and the subsequent monitoring for the effects of said treatment. By analogy, this model presents special education services as a range of possible treatments, which serves to frame them as both unidirectional and measurable. They are unidirectional in the sense of being administered by a teacher to target a specific aspect of student learning, which minimizes or omits forms of contextual and environmental learning that are not expressly delivered by the teacher. Furthermore, the IDEA requires practitioners to develop measurable annual goals as part of the IEP development process, and they are required to record progress data that tracks changes in student performance in response to special education services over the lifetime of the IEP. Together, these points indicate that the range of possible special education services that might be considered for inclusion in a student's IEP is restricted to those that are both unidirectional and measurable.

3.9 Impact of Each Restriction on Access for Students with ID

Each of the forms of restriction associated with a liberal conception of the student discussed above can be understood to negatively affect students with ID by impacting the distribution of access to educational resources that they receive. This point is most clearly observable in the prioritization of individualized and rational forms of knowledge demonstration during the special education evaluation process. This priority indicates that educational evaluations reward precisely the skills and capacities that students with ID often struggle to demonstrate. The special education decision making process echoes and reinforces this priority by principally basing all decisions on the data generated through the evaluation process. Both of these points suggest that students with ID are less likely to receive access to general education resources, which has been reported to be the case by

OSEP (2021) and multiple empirical studies (Kurth et al., 2015; Morningstar et al., 2017). Furthermore, the demand for unidirectional and measurable special education services limits how educational resources can be deployed for the benefit of the student. This point can also reasonably be taken to decrease the likelihood that students with ID receive access to general education resources in order to provide access to the specialized strategies, interventions, and expertise represented by separate special education classroom. This point has been frequently cited throughout the history of American special education as a primary reason for maintaining the use of separate special education settings (Osgood, 2005; Trent, 2017). Considered together, a liberal conception of the student restricts what aspects of learning and development are considered relevant for determining and responding to the educational needs of students with disabilities, in addition to restricting how educational resources can be deployed in the service of such students. By extension, a liberal conception of the student serves to reduce the access that students with ID are likely to receive to general educational resources, which empirical studies have shown to be harmful to the learning and developmental outcomes of this population.

The impact of a liberal conception of the student on the distribution of access also provides a plausible explanation for the argument developed earlier in the present chapter regarding why the educational rights of students with ID are not ensured in educational practices. It was argued that the educational rights of students with disabilities through the provision of FAPE can be understood as fundamentally access-oriented and empirically grounded. That is, FAPE is provided by first determining educational need through the use of educational evaluations, and then providing access to the appropriate educational resources to support and address those needs. This point makes clear that the educational

rights of students with disabilities are grounded in the presumed value and use of educational evaluations. Here I have shown that this value and use is itself grounded in an a priori and metaphysical conception of the student. Furthermore, I have shown that this conception of the student prioritizes and rewards forms of student learning, development, and knowledge demonstration that students with ID struggle to demonstrate. These points reveal that key philosophical assumptions that govern the distribution of access and, by extension, the protection of educational rights actually serves to resist the inclusion of students with ID. That fact suggests that key mechanisms within educationally relevant disability law that govern the distribution of access to educational resources and, by extension, the protection of educational rights actually serves to resist the inclusion of students with ID. This point is substantiated in special education services statistics showing that students with ID receive significantly less access to general education resources and their associated benefits in comparison to other student populations. Furthermore, a growing number of empirical studies have found that this access differential is harmful to the learning and development of students with ID. Considered together, key philosophical assumptions implicit in educationally relevant disability law in the form of a liberal conception of the student can plausibly explain why the educational rights of students with ID are not ensured in educational practices. If accepted, my position also indicates the need for retheorizing how the student is conceptualized within educationally relevant disability law as a viable pathway to addressing and potentially resolving this problem. Doing so carries the potential to better protect students with ID by improving how they are able to benefit from accessing public education services.

CHAPTER 4.

4.1 Introduction

The central aim of the chapter to follow is to develop a provisional and Deweyan conception of the student that represents an alternative to the liberal conception of the student that has been the focus of the present examination thus far. Once developed, I will then apply this alternative conception of the student to three areas of educational policy and practice that have been examined in previous chapters. Using resources from Dewey, I will attempt to develop a conception of the student that is broadly characterized as an open-ended and communal being that is capable of enacting a limited sense of self-direction and self-creation through its ongoing social interactions and experiences. Once provisionally established, I will then conduct a thought experiment by applying this alternative conception of the student to aspects of disability theory and educational policy and practices that I have previously argued to negatively affect students with intellectual disabilities (ID) in important ways. These aspects broadly include (1) educational decision-making procedures and the distribution of access to educational resources, (2) educational rights and their alignment with educational decision-making procedures, and (3) the purpose of public education in benefiting students with ID and contributing to their flourishing as a student population. By the conclusion of the present chapter, I will have shown that retheorizing the current conceptualization of the student as it appears in educational policy and practice is a plausible path to changing how special education resources are used to benefit students with ID. Furthermore, that doing so can enable the practical expansion of access to general education resources for students with ID, thus

provisionally tracing out a middle ground between the dominant positions assumed by adherents of the status quo and full inclusion, respectively.

I will begin by briefly summarizing the central conceptual features of the liberal conception of the student, and the arguments that were developed in the previous chapter regarding its relevance for educational rights and educational practices as both are established in educationally relevant disability law. I have developed and used the term liberal conception of the student to refer to an a priori and metaphysical conception of the student that I have shown to be implicit in educationally relevant disability law. The liberal conception of the student is discernible in two key philosophical assumptions in educationally relevant disability law that include the conceptual constitution of the student as an atomistic and rational being, and the accessibility of rationality via empirical evaluation practices and instruments. The liberal conception of the student provides the basis for the conceptualization of educational rights in the sense of free and appropriate public education (FAPE), which I have characterized as an access-oriented and empirically grounded set of rights. Specially, the liberal conception of the student grounds the value and use of educational evaluations for first determining educational need, and then distributing access to appropriate educational resources for students with disabilities. The liberal conception of the student also structures the enactment of these educational rights in educational practices by governing the aspects of learning and development that get evaluated, how the data from those evaluations inform educational decision making, and how individualized education program (IEP) teams perceive the value and use of special education practices for benefiting students with disabilities. It was shown that the role of the liberal conception of the student in shaping educational rights and educational practices

reduces the access that students with ID receive to general education resources by making the performance of individualized rational knowledge a condition of inclusion, and by addressing perceived deficits in these areas through the use of specialized educational resources (e.g., separate classrooms). Below I will provide an overview of Dewey's theory of the self before applying his insights to aspects of educational policy and practice that have been identified as problematic for students with ID.

4.2 Dewey, Liberalism, and the Self

4.2.1 Dewey and Reconstruction

As briefly discussed in previous chapters, Dewey endeavored to reconstruct key aspects of the Western philosophical tradition. Here I want to briefly consider how he understood and applied the concept of reconstruction before discussing its relevance for his theory of the self. Dewey's concept of reconstruction carries a two-pronged meaning. First, reconstruction serves as a call to reconsider the value and use of philosophy for informing social organization and its central processes. His intention was to reorient the very thing philosophy is by reframing it as a set of provisional tools to be applied to contemporary social problems rather than a source of stable and universal truths (Bacon, 2012). Second, reconstruction characterizes knowledge as a situated, empirical, and creative process that people engage in through interactions with their material and social environments. That is, what we call knowledge has been created in response to experience, and it will be recreated in the sense of adding, removing, and reorganizing it in various ways in response to further experience. Rejecting outdated outlooks on rationality or

“reason,” Dewey describes the process of reconstructing knowledge, arguing that, unlike other outmoded formulations that he believes do not work:

Concrete suggestions arising from past experiences, developed and matured in the light of the needs and deficiencies of the present, employed as aims and methods of specific reconstruction, and tested by success or failure in accomplishing this task of readjustment, suffice (Dewey, MW12, p. 135).

Both senses of reconstruction discussed here are critical of the traditional focus of Western philosophers with the discovery of universal knowledge that could better inform social organization and practices. Specifically, Dewey is rejecting the Platonic view that human societies require universal foundations provided by philosophers, as well as the Cartesian and Kantian views of knowledge as a set of stable concepts that are accessible to human reason (e.g., contra empirical knowledge). Rorty (1991) echoes my reading well in his characterization of Dewey’s pragmatist and reconstructive vocabulary as reflecting a “built-in caution against metaphysics” that allows us to view social organization and progress as a “history of making rather than finding” (p. 10).

4.2.2 Dewey and the Self

Dewey’s concept of reconstruction also advances a philosophical anthropology or a theory of the self. In particular, he developed a naturalized conception of the self as a situated, relational, and partially open-ended being that provisionally constructs itself through a process of situated agency (Weber, 2010). Dewey’s position contrasts with those of Descartes and Kant that conceptualize the self as an unsituated, non-relational, and closed being characterized by the capacity for rational thought. Dewey was specifically

critical of the Cartesian and Kantian strains of thought that he found in classic liberal theory that conceptualized the individual and personhood as a static and detached phenomenon that is deduced through reason rather than constructed through experience (Weber, 2010). Against these positions, Dewey argued that the self was misunderstood when taken as “something already made” (Dewey, MW14, p. 98) or “something given” that exists in total beyond the scope of experience (Dewey, MW12, p. 191). He further argued, specifically against Kant, that the individual was also mistakenly viewed as a “ready-made self behind activities,” thoughts, and actions in the world (Dewey, MW14, p. 97). By contrast, Dewey viewed the self as a being “in process” (Dewey, MW12, p. 192) or “in the making” (Dewey, MW14, p. 151) in that it is continually constructed through transactions with one’s environment. The self, for Dewey, is embedded in and always bound up with specific historical and social context(s). He often pointed to familiar social arrangements, such as “laws, institutions” and local communities as environments that served as the principal “means of creating individuals” (Dewey, MW12, p. 192). Despite the significance of environmental factors in shaping the individual, Dewey also did not think that the individual was completely determined or constructed by them. Rather, he argued that individuals demonstrated a “plasticity” in their ability to learn from experience by forming habits of thought and action that served to shape and inflect future thoughts and actions (Dewey, MW9, p. 58). Dewey characterized this process of habit formation and transformation as growth because it is through them that the self provisionally constitutes itself (Dewey, MW14) against the demands of its environment (Dewey, MW9). Garrison applied the term “social self-creation” to capture Dewey’s view that the self is rooted in a material and social community, yet capable of enacting a restricted sense of creation

through engagement with it (Garrison in Mason, 2018, p. 5). I think shades of Dewey's theory of the self can be found in the philosophical work of Nietzsche, Heidegger, Foucault, and Rorty because each of these thinkers attempted to rearticulate the self in terms of its context to varying degrees. Considered together, Dewey viewed the individual as the fluid and provisional product of both agency and structure.

For my purposes, the Deweyan self is in tension with the liberal self that has been discussed in previous chapters. Recall that the liberal self was characterized by a series of ontological claims that collectively posit a socially atomistic being defined by the exercise of prudential reason and an accessibility to the methods of empirical science. As noted above, the liberal self reflects key aspects of the metaphysical views advanced by Descartes and Kant, and Dewey's theory of the self contrasts with these positions in three key ways that I will discuss here. First, Dewey argued that the self was best understood as a process in contrast to the liberal self that was primarily understood as an object that possesses content prior to experience. That is, on Dewey's view, the self is not primarily a thing or a 'what' that corresponds to self-referential language and concepts, but rather "the self is seen in process" of ongoing reconstruction over time (Dewey, MW12). Weber (2010) is helpful here for clarifying this point as he describes the Deweyan self as both "subject and object of experience," which ascribes a fluid character to this idea in the sense of a self-in-process that is only ever on-the-way (pp. 89-90). Rorty (1999) summarizes this idea in writing, "Human is an open-ended notion, it names a fuzzy but promising project rather than an essence – humanity carries the ability to become what it once merely imagined, its capacity for self-creation" (p. 52). The idea of self-as-process follows from the basic

character of Dewey's project of reconstruction and is evident in his theory of growth, which will be discussed further below.

A second important point of tension with the liberal self comes from Dewey's rejection of the self as an atomistic being. For Dewey, the self is always situated or embedded within specific historical and social contexts, and it is only through direct experience transacting with one's environment(s) that he thought "the self gets solidity and form" (Dewey, MW14, p. 83). As a result, the Deweyan self is fundamentally a communal self that develops habits of thought and action through engaging in social processes with others. He expresses this point in writing, "What one is as a person is what one is as associated with others, in a free give and take of intercourse" (Dewey, MW9, p. 130). Dewey's related theories of democracy and education overlap with his theory of the communal self because both ideas signified forms of communal association that he considered to be the primary sites through which the self is developed (Danforth, 2001; Mason, 2019). Select contemporary liberal scholars have echoed Dewey's communal self through descriptions that include the self as "thickly constituted" (Sandel, 1998, p. 178), "culture-bearing" (Gutmann in Taylor, 1994, p. 6), and "dialogical" in the sense of developing out of "dialogue with other people and ideas" (Taylor, 1994, p. 33). Each of these descriptions touches upon Dewey's view of the self as partially shaped by its participation in various and overlapping communities (Dewey, MW14). Furthermore, Dewey understood community to refer to a mode of association in the sense of a shared set of social understandings and practices that are not necessarily chosen or geographically bound (Dewey, MW9). This view departs from the traditional liberal view of community as the product of rational choice (Kautz, 1995), which is most clearly illustrated in aspects

of the social contract tradition most commonly associated with the work of Hobbes, Locke, and Rousseau (Hickman, 2006). Considered together, Dewey's communal self is partially constituted by its situatedness and participation in particular historical and social contexts, but it remains open-ended in the sense of retaining the ongoing possibility of reconstructing itself in limited ways over time.

A third important point of tension with the liberal self comes from Dewey's rejection of the dominant view of rationality in the Western philosophical tradition. Since Aristotle's characterization of the human being as a rational animal, the capacity for rational thought has been widely considered the defining feature of human life (Rorty, 1998). Within liberal theory, the exercise of prudential reason is a core feature of the liberal self that is expected to choose and subsequently pursue its own ends. Dewey pushed back on both of these traditional understandings of rationality and what it meant for the self. He argued that rationality is misunderstood as "something laid from above upon experience" or "as a faculty separate from experience," and therefore misapplied as an a priori feature of the individual (Dewey, MW14, p. 135). Rationality, for Dewey, was not a foundational feature of the self in the Aristotelian sense, nor was it a faculty that could discern acontextual truth in the Cartesian sense. Dewey preferred the term intelligence by which he meant a naturalized conception of rationality in which an individual supplies an "order and direction" to their habits of thought and action in response to experience (Dewey, MW14, p. 165). Understood as such, intelligence is "an organizing factor within experience" in contrast to the traditional view of rationality as an ideal standard and faculty that stands outside of experience (Dewey, MW12, p. 133). Weber (2010) characterizes Dewey's conception of intelligence as the "careful directing of our formation of concepts"

and key aspect of the process of self-formation that “leads to our understandings of ourselves and others” (p. 112). Put plainly, intelligence is not a feature or possession of the self, rather it signals an ongoing process in which one progressively learns how to learn more effectively from experience by altering habits of thought and action as they relate to producing better outcomes for one’s purposes. To say that the self reconstructs itself intelligently over time is only to say that a person both shapes and is shaped by their experiences. Considered together, Dewey’s conception of intelligence serves to situate rationality within human experience, while rejecting its traditional meaning as a foundation for understanding the self.

4.2.3 Summary of the Deweyan Self

To summarize Dewey’s position, the self is a processual being that both makes and is made through its participation in specific historical and social contexts. This fluid and ever-provisional characterization of the self specifically rejects the twin-idea that the self corresponds to metaphysical foundations concerning ‘what’ it is (e.g., rational animal) or ‘what’ it does (e.g., rational choice). Dewey’s theory of the self also serves as the lynchpin between his interrelated and better-known theories of education and democracy (Fenstermacher, 2006). As previously discussed, one of Dewey’s central criticisms of the traditional education of his day was that it reflected multiple misunderstandings of growth that stemmed from a specific view of the student as a static and passively immature being (Dewey, MW9). Viewing the student as possessing positive powers and interests that direct them, he argued that growth becomes reframed as the students’ own ongoing accomplishment rather than something done to them by teachers and schools (Dewey, MW9). The educational process taken as “one of continual reorganizing, reconstructing,

transforming” can be understood to include the self as one aspect of the student that is reflexively and intelligently undergoing change in response to experience (Dewey, MW9, p. 55). These ideas are further echoed in Dewey’s theory of democracy that he took to designate a particular social ethic (Danforth, 2006), or “mode of associated living” and “conjoint communicated experience” (Dewey, MW9, p. 94). In one sense, democracy signals the cooperative and interactionist character of the social contexts that the self participates in and thereby constructs itself over time. In another sense, democracy signals a pan-equality that is meant to facilitate equal participation of all people in decision-making processes (Bernstein, 1985 cited in Danforth, 2001), as well as to afford an equal opportunity for self development (Dewey, MW9). The self as a situated being that both shapes and is shaped in response to experience is an integral part of how Dewey envisioned educational and democratic processes operating.

4.3 Possible Applications of the Deweyan Self to Educational Policy and Practice

With the central conceptual features of the Deweyan self in place, I will now transition to applying this idea to some key areas that have been discussed in previous chapters. These areas will include the conceptual meaning of disability in education, educational decision making as it relates to the distribution of access for students with ID, educational rights as they are formulated in educationally relevant disability law and enacted in educational practices, and the general purpose or aim of special education. My purpose over the rest of the chapter can be read as a thought experiment that explores how conceptualizing the student on a Deweyan view impacts aspects of these concepts and the material processes affected by them. In particular, I will consider how the Deweyan self might serve as a vehicle for addressing and potentially resolving some of the problems that

have been discussed in previous chapters regarding access and educational benefit for students with ID.

4.3.1 Dewey, Disability Theory, and Education

As discussed at the beginning of chapter two, disability theory has become a serious theme of analysis for philosophers, sociologists, and practitioners in various institutional domains. Terms that conceptualize disability in various ways, such as the medical and social models, are now considered common parlance within disability scholarship (Watson & Vehmas, 2020) and special education practice (Baglieri, Valle, Connor, & Gallagher, 2011). Recall that the medical model conceptualizes disability as an abnormality that is locatable in the body and treatable via medical science. By contrast, the social model conceptualizes disability as a constructed social and political status that is ascribed to bodies that differ in functioning and/or appearance from contextual standards of normality (Garland-Thomson, 2005). It was argued in chapter two that these two models had become blended in educationally relevant disability law because the special education process seemed to harness aspects of both models in order to enable educational teams to identify the learning and functional needs of students with disabilities. The blending of medical and social models around the pragmatic conception of functionality is further evidenced in the definitions developed by authoritative texts and organizations, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and the American Association on Intellectual and Developmental Disabilities (AAIDD). For example, both the DSM-5 and the AAIDD emphasize the same three central components in their definition of intellectual disability, which includes (1) an impairment to cognitive functioning that (2) can negatively affect functioning in several areas of daily life (e.g., reasoning, thinking,

planning, judgement, etc.) that (3) affects the individual during the developmental stage of life (before 18) (Brue & Wilmshurst, 2016). Below I will show that Dewey's conception of the self can be used to critique aspects of the models discussed above in ways that are relevant to the purposes of the present examination.

The medical model, again, conceptualizes disability as an objective quality of the human body that medical science can and should remedy whenever possible. It is this medical sense of disability that is at least partially indicated when a student qualifies for special education services and receives a disability label on the basis of empirical educational data. Dewey's conception of the self serves to retheorize the meaning of disability in the sense of what a disability label signifies when it is applied to a student. On a Deweyan view, the self is not characterized by some essential feature (e.g., rationality) or level of functioning (e.g., age-appropriate performance), and so disability does not correspond to some essential feature of the student, their body, and/or their functionality in relation to others. As a result, the Deweyan self rejects a medical view of disability as an objective and quantifiable feature of the person. This view is supported by both Danforth (2008) and Mullins (2019) who argue that Dewey's position regarding disability aligns more with the social model that locates disability in the interaction between the individual and some aspect of their material, social, and/or political environment. Further support for my position can be found in Dewey's own work in which he argued against the use of intelligence testing as it existed during the early 20th century. For Dewey, intelligence testing mistook intelligence as an "innate and unalterable psychological" quality of the individual (Dewey, MW13, p. 290), rather than an experience-based process through which habits of thought and action become progressively refined over time (Danforth, 2008).

Furthermore, Dewey argued that intelligence testing functioned as a tool of social categorization that treated individuals “as creatures of a class, a quantitative class which covers up truly individualized traits” (Dewey, MW13, p. 296). Both points suggest that Dewey rejected the idea that disability corresponded to an essential or objective quality of the self that was accessible to empirical instruments of measurement. As a result, he would also reject the common educational practice of using empirical methods to categorize students in ways that affect their access to educational resources and environments. Furthermore, I think Dewey would support the limited use of IQ tests and similar empirical methods only insofar as they were used for practical purposes in the sense of enabling “more intimate and intensive inquiry into individualized abilities and disabilities” (Dewey, MW13, p. 294). That is, the value of any methods deployed by educators lies in the effects that attend them for student learning and development, which is a position that is reflective of Dewey’s pragmatism.

The social model, again, views disability as a feature of one’s social and political environment in the sense that it signifies a constructed status that is applied to bodies, as opposed to being a quality inherent to a body. That is, disability is theorized as an historically and socially contingent status constructed and applied by a society to its deviant or abnormal membership (e.g., Baglieri et al. 2011; Davis, 2013; Garland-Thomson, 2005; Goodley, 2017; Graham & Slee, 2008; Oliver, 2009). The concept of least restrictive environment (LRE) captures aspects of the social and political conception of disability by establishing a preference for inclusion where students with disabilities are required to be educated alongside their peers. This point suggests that LRE is intended to avoid attaching negative social and political connotations to students with disabilities that might occur if

they are denied access to their community of peers. Notably, the concept of LRE reveals a tension in educational practice between trying to not penalize students with disabilities, and implicitly acknowledging that the social model of disability holds limited value for educational practice. This point can be illustrated through a closer consideration of Dewey's view of construction as he applied it in his theory of the self.

There is some evidence that Dewey would have agreed with the characterization of disability expressed in the social model described above (Danforth, 2008). He was critical of forms of social stratification that he thought were produced by evaluating people based on their membership in an intellectual or economic class rather than as individuals (e.g., Dewey, MW13, pp. 292-94, 296-98). He writes, "The idea of abstract universal superiority and inferiority is an absurdity" (Dewey, MW13, p. 297), and elsewhere he writes, "Moral equality means incommensurability...not in power for attaining ends in common to a class of competitors, which is bound to result in putting a premium on mastery over others" (Dewey, MW13, p. 300). In both passages Dewey emphasizes the importance of individuality as a human quality that cannot be empirically or morally reduced to fit preexisting social categories. Despite that area of agreement, I think Dewey would reject the idea that the individual is entirely constructed from the outside-in. This point reveals a difference in the way the concept of construction is understood and applied in disability scholarship and in Dewey's work. The former uses the idea of construction to reject the view that social positions and identities are objective or natural (e.g., person with a disability), and to reconceptualize them as both provisional and contingent on a given social context and therefore mutable to an extent. By contrast, Dewey understood construction to designate a situated and agential process through which an individual is

both passively shaped and actively shaping themselves through and in response to experience. He did view the “habit of classification” to be highly problematic for a democratic society (Dewey, MW13, p. 301), and he acknowledged that negative and material consequences often attend such practices. Despite that, I agree with Danforth (2008) that Dewey would likely reject the claim that the self is wholly and passively constructed because it overlooks the centrality of growth, agency, and the processual character of the self.

The significance of Dewey’s position concerns the value that the social model carries for educational practice. If disability is simply a negative social status or identity that is constructed and applied to bodies of difference, then disability is not a real quality of student learning and development.²¹ This is precisely the point advanced by Garland-Thomson (2005) and others that have argued that disability is an ideal effect of social and political systems of power that construct and differentially position people in accordance with their embodied identities (e.g., Davis, 1999; Erevelles, 1996; Rohrer, 2005; Shakespeare, 1996). The educational value of this idea is predominately viewed as indicating a need to resist and dismantle systems of identitarian power that influence educational policy and structure its enactment in educational practices (e.g., Annamma, Connor, & Ferri, 2016; Mahon-Reynolds & Parker, 2016; Smith, 2007; Smith, 2010, Valencia, 2010). This position minimizes the effects that bodily difference can carry for the daily life experience of people with disabilities (Anastasiou et al., 2014; Bichenbach, 2020; Goodey, 2016; Hall, 2015; Hirschmann, 2012), as well as the significance that

²¹ This point indicates an idealist position regarding the ontology of disability, in contrast to a realist position that is most clearly represented in the medical model.

disability has for educational practice (Dixon, 2005; Kauffman, 1995; Kauffman & Hallahan, 1995; Kauffman, 2020; Kauffman & Badar, 2020). That is, what a student knows and can do is meaningful for determining how educational resources ought to be deployed in the sense of informing what, how, and where to teach them.²²

Dewey echoes this point in his position regarding intelligence testing, which broadly rejected their use in categorizing students and supported their use for improving educational practices. He was critical of the use of intelligence testing for “subordinating education and social arrangements to stratifications based on averaged gross inferiorities and superiorities” (Dewey, MW13, p. 296), and instead argued that such tests should be used to better enable educators to attend to the “intrinsic qualities which require unique opportunities and differential manifestation” demonstrated by all students (Dewey, MW13, p. 300). These and similar passages suggest that Dewey was more concerned with the practical value that identifying differences in student abilities than he was with providing a response to the ontological question regarding ‘what’ is disability.²³ I think he would reject the idea that disability is simply a difference that shouldn’t make a difference, while also emphasizing how aspects of educational environments can negatively affect the learning and development of students with disabilities. Heiny (1981) echoes this point well in writing, “The central problem is to identify what contributions constructs of intelligence make to students, special educators, and others associated with special education” (p. 309).

²² I am not suggesting that the manner in which we currently determine what a student knows and can do is completely legitimate. A central focus of the present examination has been the problematization of the concept of educational need and how it is commonly determined according to educational policy. Rather, my point is that educational need is relevant to informing how educators engage with students despite what I think is an obvious need to improve how we determine it.

²³ Michael Oliver (2009), creator of the original social model of disability, expressed a similar characterization about the many models of disability that have been developed in recent decades that seem to carry very little practical value for benefiting people with disabilities in public institutions.

Considered together, Dewey would likely agree with important aspects of the social model of disability, but I think he would also question how it could be meaningfully applied to educational practice to the benefit of students with disabilities.

As explained above, the definitions developed by both the DSM-5 and the AAIDD have produced what I think are a blended model of disability that reflects aspects of both the medical and social models. Furthermore, I understand this blended model to emphasize human functionality as the combined product of biological and environmental factors as the defining feature of disability. This is evidenced in the definition of intellectual disability developed in the DSM-5 and by the AAIDD, as both maintain a 70 IQ cutoff score and objective deficits in adaptive functioning that affect the performance of basic daily functioning (Brue & Wilmschurst, 2016). This and similar definitions of intellectual disability suggest that the concept of disability can encompass biological and social features, but the central concern lies with human functionality within specific environments. I think this position comes closest to what I understand Dewey's position to be regarding the meaning of disability and its significance for education.

Recall that Dewey's theory of education broadly holds that the individual student and the development of their powers of thought and action is the appropriate focus of what he termed progressive education. Put another way, he rejected the idea that students in general can be understood to learn, think, act, and experience educational environments and processes in general. He writes of education, "The purpose of education, along with equipping students with some indispensable tools, was to discover and release individualized capacities so that they might make their own way" (Dewey, MW13, p. 298). With that purpose in mind, I think Dewey would reject the aspects of what I have termed

a blended model of disability that did not positively contribute to the learning and development of students with disabilities. For example, Dewey would be critical of the continued role of medical science for identifying disability as an objective feature of a person. Dewey's theory of the self and his pragmatism more broadly suggest that he would reject the idea of qualifying for disability status because it reflects what he termed "the classificatory submergence of individuals in averaged aggregates" (Dewey, MW13, p. 293). That is, to say that one has or does not have a disability relies on some standard external to the individual as a basis for categorizing them as such. I take Dewey's position on this point is in alignment with scholars that have specifically criticized educationally relevant disability law for perpetuating an outdated and medicalized view of disability by predicating special education funding and service provision to an empirically based system of categorization (Frey, 2019; Gartner & Lipsky, 1987 in Osgood, 2005; Smith, 2010).²⁴ By contrast, I think Dewey would approve of the interpretation of human functioning in terms of the performance of situated tasks that are common to daily life. The concept of immaturity, for Dewey, disclosed the possibility for growth and indicates that a student can be more or less effective in pursuing their own purposes within educational environments, as well as developing habits of thought and action in response to experience that brought about better outcomes was central to his concept of growth (Dewey, MW9). Danforth (2008) echoes this point in noting that a Deweyan view of intellectual disability can be "practically framed" as a consideration of factors that either enable or prohibit individual

²⁴ Note that my purpose here is to connect what I think is Dewey's criticism of the ontology of disability expressed in the medical model with scholarship that critiques a specific educational practice on the basis of a similar ontological position. My purpose is not to deny the need for a policy-based funding mechanism, or to explicitly articulate a Deweyan alternative to funding public special education. I think that topic represents an important area of policy and practice that Dewey's position is relevant for considering, but it is beyond the scope of the present discussion.

students from engaging in “effective, goal-satisfying activity” (p. 58). This definition ties together the tasks, environment(s), and functional goals specific to the student in conceptualizing what disability signifies. When read in this way, I think Dewey’s position as it concerns the social model of disability is closer to the interactionist models of Oliver (2009) and Shakespeare (2013, 2018) in comparison to the structural power-centric and identitarian models of McRurer (2017) and Garland-Thomson (2005).²⁵ Considered together, Dewey’s view of disability would emphasize the pragmatic value that any definition or set of evaluation tools carries for students with disabilities.

4.3.2 Dewey, Educational Decision-Making, and the Distribution of Access

A central focus of the present examination has been to analyze key features of the special education process as it specifically concerns the distribution of access to educational resources for students with ID. Policy predicates the special education process on the presumed value and use of educational evaluations as the principal basis for making educational decisions concerning all students with disabilities. I have shown that the centrality ascribed to educational evaluations within the special education process is indicative of two key philosophical assumptions regarding the conceptual constitution of the student. To repeat, these philosophical assumptions are (1) that the student is an

²⁵ Briefly, what I have termed the interactionist version of the social model is predicated on a distinction between impairment and aspects of the physical, social, and political environment. An individual can have a bodily impairment that affects their functioning within these environments, but one is disabled by virtue of the response of society to that impairment through its central design and processes (Oliver, 2009). By contrast, what I have termed the structural identitarian version of the social model interprets disability as a “system of representation” that marks and excludes bodies that depart from socio-cultural norms of appearance and functioning (Garland-Thomson, 2005, pp. 1557-1558). Both versions of the social model locate disability in aspects of society rather than the material body of the individual. Despite that similarity, I think the interactionist version retains a material and functional focus that Dewey would support due to its relevance for educational practice in comparison to the reification of disability as an acquired and structural identity expressed in the structural identitarian version.

individualized and rational being whose essential features are (2) fully accessible to empirical methods of evaluation. I have used the term liberal conception of the student to identify its lineage and central conceptual features in association with the liberal political and philosophical tradition. Furthermore, I have shown that the liberal conception of the student is problematic for students with ID in important ways that directly concern the educational rights and the educational benefits accrued by this population through their participation in public education. Similar to the previous section, here I will apply Dewey's conception of the self to select aspects of the special education process to argue that doing so could reasonably result in a different distribution of access to general education resources that could improve the learning and developmental outcomes for students with ID.

My focus here will be on the two philosophical assumptions that comprise the liberal conception of the student and their role in shaping educational decision-making for students with ID. As explained in the previous chapter, the priority of educational evaluations established in educationally relevant disability law is grounded in a liberal conception of the student as an individualized, rationale, and empirically accessible being. That is, the priority ascribed to educational evaluations stems from their presumed ability to access aspects of the student that are considered to be most valuable for measuring their current knowledge, as well as informing decisions regarding potential changes to their educational programming. I have shown that the centrality of educational evaluations negatively affects students with ID because they prioritize forms of learning and knowledge demonstration that this population commonly struggles to demonstrate. Specifically, educational evaluations prioritize the demonstration of decontextualized and

academic forms of learning and development, which serves to minimize other forms of student knowledge (e.g., social, vocational) and modes of demonstration (e.g., situated).

As a result, the access that students with ID receive to general education resources is negatively affected in at least two specific ways. First, students with ID are more likely to be placed in separate special education settings in comparison to other student populations (Kurth et al., 2015; Morningstar et al., 2017; OSEP, 2021), which also reduces their access to learning and developmental opportunities (e.g., social) that are often only available in general education settings (Agran et al., 2020; Downing, 2010; Jackson et al., 2009; Wehmeyer et al., 2021). The example of Chelsea (condition 3) described in the previous chapter demonstrated this point because her social learning and development was negatively affected by the priority placed on her academic learning, which previous IEP teams determined to require more time in separate special education settings. Second, the presumption that educational evaluations can readily access the most significant aspects of student learning and development contributes to the view of special education services that can be similarly deployed to target and remediate them (Causton-Theoharis et al., 2011; Frey, 2019; Kurth et al., 2019; Ruppard, Neep, & Dalsen, 2016). Elsewhere I have illustrated this point by comparing the special education process to medical treatments in the sense that educational evaluations provide a diagnostic basis for the subsequent application of treatment to address the malady in a unidirectional manner. This view of educational practice and the tools used therein minimizes the value of environmental and unstructured learning opportunities (e.g., passive access or exposure-to) that are not explicitly designed and administered by a teacher (Carter & Hughes, 2005; Foreman et al., 2004; Ruppard et al., 2018; Shogren et al., 2015; Soukup et al., 2007; Wehmeyer et al.,

2003). The example of Stacy (condition 2) described in the previous chapter also illustrated this point because her access to general education settings was reduced in favor of separate special education settings that was intended to provide access to specialized expertise, strategies, and materials to address specific areas of her academic learning and development.

As explained above, Dewey conceptualized the self as a fundamentally situated, communal, and agential being that is both constructed and constructing through its ongoing experiences interacting with aspects of its environment. The self was misunderstood, for Dewey, if conceptualized in distinction from its contexts, in advance of its experiences, and/or in distinction from its agency. I have shown that Dewey's conception of the self was a key aspect of his work on education because he identified a central problem with the traditional education of his day in its misinterpretation of growth, which he argued to principally derive from a misconception of the student as a priori immature and passive in its acquisition of knowledge (Dewey, MW9). For my purposes, the Deweyan self serves to reject key aspects of the liberal conception of the student that I have argued to be essential for revealing the inherent rationale that informs the design of the special education process that functions to distribute access to educational resources for students with disabilities. Below I will consider how predicating educational decision-making on an alternative and Deweyan conception of the self might affect how access to educational resources is distributed to students with ID.

The most obvious and significant consequence that I think the Deweyan self carries for a critique of the special education process concerns the concept of educational need. Recall that the special education process and the provision of FAPE more broadly begins

with a detailed evaluation phase that is designed to determine the precise educational needs of the student in order to distribute access to the educational resources that are most appropriate for addressing them (e.g., IDEA § 1414 (a)(1)(C)(i) and (b)(2-4)). The Deweyan self rejects key aspects of the liberal conception of the student upon which the value and use of educational evaluations are predicated. Specifically, the individualized, rational, and empirically accessible student can no longer serve as the a priori basis for the priority ascribed to educational evaluations. The significance of educational evaluations and the data generated by them is altered in ways that are important for educational decision making that results in the distribution of access for students with ID. Consider that if a student is viewed as a situated and communal being whose learning and development can only be understood in conjunction with specific contexts and interactions with others, then the significance of decontextualized knowledge is reduced and the necessity of access to one's community of peers is enhanced. Consider further that if reason is viewed as one tool among others that a student might deploy for the purposes of navigating, interacting with, and even altering aspects of an educational environment in order to pursue their own goals therein, then the significance of academic knowledge and cognitive processing more broadly is reduced. The overall result is that the priority of educational evaluations is eliminated because, on a Deweyan view, they no longer access essential aspects of the student, their development, and their educational needs that may require special education services. Put another way, educational evaluations are put into perspective alongside other evaluation tools and sources of information that may be equally as relevant for understanding a student's current functioning, as well as the educational needs that require attention from IEP teams.

My position aligns with scholarship that has raised questions regarding the value of educational evaluations for informing aspects of educational decision-making. Frey (2019) has argued that the value of current special education assessment practices is limited to categorizing students according to broad funding labels that connote little value for educational planning and decision-making. She writes, “The initial evaluation data, arguably, are not useful...for educators, specialists, parents, and students to identify the supports and strategies that will allow children to reach their potential; nor were the eligibility evaluation assessments designed to be used in that way” (p. 157). Cole et al. (2020) echoes this point in their study by reporting that high-inclusion placements were associated with significant academic benefits for students with disabilities, which they argued to support the need to change the way that educational evaluations are used for making placement decisions. They specifically stated that their findings revealed “the opportunity for a paradigm shift” in the way that educational evaluations are currently used in educational decision-making processes to allow for a decrease in the use of separate special placements for students with disabilities (Cole et al., 2020, p. 13). Taylor (2018) further echoes this point in noting “that attributions of intellectual ability and predictions about educability depend upon the approaches used to measure them,” which minimizes the importance of a wide range of other factors that are relevant to the assessment of ID (p. 276). These scholars collectively call into question the value and use of educational evaluations for distributing access to educational resources that benefit students with disabilities to the greatest extent possible. None of this is to say that educational evaluations should no longer be used, or that they hold no value for the purposes of educational decision-making. I am in agreement with these authors that there remains a vital role for

educational evaluations to play, but that point does not diminish the benefits that could attend altering their current role (Cole et al., 2020; Frey, 2019).

Adjusting the value and use of educational evaluations could potentially affect how the empirical data that they generate is used by IEP teams to make educational decisions that serve to distribute access to educational resources for students with ID. There are at least three interrelated ways that I think this could occur. First, IEP teams would need to seriously consider additional forms of student learning and development when determining the educational needs of students with disabilities. Doing so might consist of a more robust treatment of social skills, emotional development, and vocational knowledge and skills as they can be developed within general education settings (Brock & Schaefer, 2015; Downing, 2010; Kurth et al., 2019). This idea is echoed in scholarship that supports reducing the reliance of public education on standardized testing methods in order to adopt a broader view of child development, as well as implementing educational practices in support of that view (Meir & Knoester, 2017; Westheimer, 2015). Second, IEP teams would need to adopt a view of community as an essential educational tool for student learning and development. That is, student learning and development should be reframed as a process that one does both with and through a wide range of people, places, and activities. Such a view would depart from the hyper-focus on individualized learning and development indicated in educationally relevant disability law and additional legislation at the federal and state levels that are currently being implemented in public schools. This position is echoed in scholarship that advances similar arguments in support of educational practices that acknowledge and utilize different levels of community to benefit all students

(Falvey & Givner, 2005 cited in Cosier et al., 2013; Simplican, Leader, Kosciulek, & Leahy, 2015; Smith, 2010).

Third, and perhaps most significantly, IEP teams would need to reconsider how special educational services are deployed in the service of students with disabilities, particularly as it concerns the justification for removing students with disabilities from general education settings. This idea entails rejecting the priority of academic forms of learning and development, and the capacity for special education services to effectively address them in a targeted and unidirectional manner through the use of, for example, highly structured and manicured special education settings. While that use of special education resources may benefit some students and be preferred by some parents (Osgood, 2005), it reinforces the view that education is something done to the student and that benefits all students in the same way that Dewey specifically argued against (e.g., Dewey, MW9, p. 48). This point is echoed in scholarship that advocates for the expanded use of educational strategies that have been shown to be effective for teaching students with moderate and severe disabilities in general education settings (Agran et al., 2020; Downing, 2010; Johns, 2014; Maanum, 2013; Smith, 2010; Travers et al., 2020), and the academic and social benefits of their inclusion in opportunity-rich educational settings (Brock & Schaefer, 2015; Cole et al., 2020; Downing, 2010; Kurth et al., 2015). Considered together, these and similar changes would allow for a greater degree of balance to be incorporated into the special education process regarding the factors that influence how IEP teams distribute access to educational resources for students with ID. Furthermore, such changes would better enable educational practices to realize “an individualized balance between the academic-functional and social-personal aspects of schooling” in order to expand and

improve how students with ID are able to benefit from accessing them (Giangreco, Carter, Doyle, & Suter, 2010 cited in Doyle & Giangreco, 2013, p. 60).

4.3.3 Dewey, the Self, and Educational Rights

An important focus of the philosophical policy analysis conducted in chapter three was to reveal that the conception of educational rights established in educationally relevant disability law and their enactment in educational practices is problematic for students with ID. It was explained that FAPE represented the central substantive right and organizing principle toward which all other rights established in educationally relevant disability law contribute to providing. When enacted in educational practices, FAPE requires practitioners to conduct a thorough evaluation of any student suspected of having a disability in order to first determine their educational needs, and then to distribute access to the most appropriate educational resources to address them. As such, ER as they are conceptualized in educationally relevant disability law are appropriately understood as an access-oriented and empirically grounded set of rights. For my purposes, this interpretation of educational rights reveals that the issue of inclusion is of the utmost importance for the way such rights are meant to be understood and put into practice.

I further argued that the conception of educational rights described above carried significant consequences for educational practices. Specifically, it was argued that the educational rights established in educationally relevant disability law also established at least three conditions that must be met in order to ensure them for students with disabilities in practice. These three conditions were (1) IEP team decisions regarding access must be principally based on empirical evaluation data, (2) the distribution of access must support all areas of a student's learning and development, and (3) the distribution of access must

produce the best possible outcomes for the student. It was shown that each of these conditions were commonly not satisfied in educational practice in various ways for students with ID. Specifically, condition (1) was not met due to the prevalence of non-empirical factors in educational decision-making concerning access, condition (2) was not met due to the priority of academic learning and development reflected in educational decision-making concerning access, and condition (3) was not met because students with ID are frequently provided access to educational resources that do not produce optimal learning and developmental outcomes. Furthermore, it was argued using aspects of Dewey's work that the failure to satisfy these conditions for students with ID in educational practices could be plausibly explained by the inherent role of the liberal conception of the student in educationally relevant disability law that establishes the a priori value and use of educational evaluations that serves as the basis for both ER and their enactment in educational practices.

Dewey's conception of the self and his application of it in his work on education has been a central point of departure for the present examination. He also applied aspects of his theory of the self in developing a theory of rights and while he did not expressly apply it to his work on education, I will attempt to do so here in ways that I think are relevant to reconsidering how educational rights are conceptualized in educationally relevant disability law. Similar to his view of the self, Dewey viewed rights as an historically and socially situated concept that was constructed and maintained by communities of people (Dewey, MW5). Specifically, he understood rights to be a provisional series of restrictions that were generated by a community and subsequently placed on its membership as a means of governing social practices by obligating

individuals and institutions to interact in defined ways. Dewey wrote, “That which, taken at large or in a lump, is called freedom breaks up in detail into a number of specific, concrete abilities to act in particular ways. These are termed rights” (Dewey, MW5, p. 395) That is, rights signify limits of conduct that are “individual in residence” while also being “social in origin and intent” in the sense of governing the central social and institutional practices within a community (Dewey, MW5, p. 395). Just as Dewey denied the reality of the self as a pre-social concept, he similarly did not recognize rights as a pre-social concept (Dewey, MW5), which distinguishes his view of rights from most natural rights theories that will be explained in greater depth below (Dewey, LW2). For my purposes, Dewey’s conception of rights is based in the idea of community because the generation and practical observance of such rights relies on social interaction and agreement. Below I will provide an overview of Dewey’s theory of community to provide some additional insight into his theory of rights and how it might productively be applied to the present discussion.

Dewey is well known for his ongoing support of liberal democracy as both a political and social arrangement. For Dewey, a community is a cooperatively established and maintained project that is based on common “aims, beliefs, aspirations, knowledge” (Dewey, MW9, p. 7). That is, a community is something people make or, more specifically, it is something people do with each other in an ongoing sense (Dewey, MW9). A community, for Dewey, was an important source of social orientation in the sense that it provided a basis for shared meanings and behaviors to develop and subsequently structure the social life of a group of people (Dewey, MW9). Furthermore, the term community does not refer to a conceptual singularity in the sense of an object or thing, but is better viewed as plural concept that signals the potential for multiple communities to develop and

flourish within overlapping geographic, political, and social spaces (Dewey, MW9). I understand Dewey's theory of community to reflect an attempt to reject various metaphysical foundations (e.g., tradition, religion, etc.), while also attempting to capture the kind of ongoing and creative possibilities that he understood to characterize human social arrangements.

While Dewey's theory of community remains liberal in character, it does depart from both classical and deontological positions in important ways. In a broad sense, his theory of community is in alignment with classical and deontological liberal theory that conceptualizes it as a product of choice (Kautz, 1995) and a series of political arrangements that enable the collaboration between detached individuals to pursue their own vision of the good (Rawls, 1992). Both types of liberal theory recognize some kind of foundation regarding human beings or the kinds of social arrangements most appropriate to them. In a narrower sense, Dewey viewed community as at least partially constitutive of the individuals whose self and group understandings and social practices were shaped by their participation in it. This view aligns Dewey's position with liberal theorists that support a more democratic or republican view of political and social liberalism (e.g., Rorty, 1991; Sandel, 1998). In particular, his position as I have presented it above aligns with Michael Sandel's (1998) contemporary theory of strong community. A strong sense of community, for Sandel, designates a group of people whose individual and group identities and social practices are constituted in part through their communal association and shared lifestyle. By contrast, Sandel characterized a weak sense of community as an association of individuals that cooperatively engage with one another, but that remain socially, politically, and emotionally distinct in notable ways. Dewey's theory of community and Sandel's

theory of strong community conceptualize community as both constructed by people and constructing of people, which is a point that has been made in the present examination regarding Dewey's view of the self.

Dewey's theory of community and his pragmatism more broadly carries some important consequences for his theory of rights. Rights, like communities, are entirely constructed in the sense of not being grounded in a metaphysical foundation (e.g., God) or adhering to an ideal quality of human life (e.g., reason). As a result, rights are always provisional and therefore revisable in response to the material effects that they produce for a community of people. These philosophical qualities distinguish Dewey's theory of rights from many of the natural rights theories that have been dominant in the liberal legal tradition. Beth Singer (1999) identifies four specific philosophical qualities that she understands to characterize the liberal legal tradition that I think are helpful for situating Dewey's position. These philosophical qualities include (1) individualism in the sense that rights are ascribed to individuals, (2) a priorism in the sense that rights are viewed as self-evident or pre-social concepts, (3) essentialism in the sense that rights are understood to adhere to an essential human quality (e.g., reason), and (4) adversarialism in the sense that rights signify claims against other individuals and the government (Singer, 1999). Singer situates Dewey's theory of rights with those of Jean Jacques Rousseau and George Herbert Mead because their positions contrast with the philosophical qualities described above that she understands to characterize the liberal legal tradition. Furthermore, Singer's own position aligns with Dewey's in important ways, as she characterizes rights as "living institutions" because they develop from and change with the norm-governed social practices that structure a given a community (Singer, 1999, p. 31). Considered together,

Dewey's communal-based theory of rights contrasts with the dominant natural rights theories of Kant and Locke, but aligns in significant ways with theorists like Rousseau, Mead, and Singer that support a non-metaphysical and socially-fluid view of rights.

Dewey's communal-centric conception of rights presents an interesting challenge to the way that educational rights and, specifically, FAPE is conceptualized in educationally relevant disability law. Recall that FAPE is defined in educationally relevant disability law as the provision of "special education and related services" at no cost to the family, in accordance with the standards of the local education agency, by an accredited school, and in accordance with the student's IEP (IDEA § 1401 (9) (A-D)). In a narrower sense, FAPE principally concerns the distribution of access to appropriate educational resources as it can be determined on the basis of empirical evaluation data. For my purposes, I think Dewey's theory of rights serves to raise an important question regarding the relationship between federal education law and its interpretation and enactment in local educational communities. Educationally relevant disability law and similar federal laws typically do not enlist the direct participation of local educational communities when developing their contents and standards of enactment in educational practices. While Dewey does not expressly make an argument for direct democratic processes in the development of all legislation, I do not think that the concept of federal law meets his idea of communally based rights except in the most basic liberal senses of the term. That is, federal law does not reflect an incorporation of communal norms and practices in which it is to be enacted in educational practices. Furthermore, Dewey insisted that the value of all rights lies in their material effects in the communities in which they are enacted, which the present study has shown to include negative effects for students with ID. Given these

circumstances, I think Dewey's theory of rights could support two potential responses to the problems concerning educational rights and access for students with ID that have been the focus of the present examination. The first would be to rewrite aspects of educationally relevant disability law using significantly greater participation from local educational communities in reformulating the aspects of FAPE. The second and more plausible option would be to use Dewey's theory of rights to support increased flexibility for local educational communities to determine educational need and distribute access to educational resources for students with ID. Below I will focus on developing a case for the second option as I view it as a potentially plausible way to enhance the role of communities in improving the provision of FAPE for students with ID as it is currently written.

Dewey's communal-based theory of rights serves to conceptualize them as an ongoing product of social processes in contrast to, for example, natural rights theories that ground them in a metaphysical foundation of some kind. For Dewey, rights were a feature of a particular social arrangement in the sense of being "itself a social outcome" that belonged to the individual "in so far as he is himself a social member" within a particular community of people (Dewey, MW5, p. 396). Dewey's theory of community further inflects this position because of the importance that he places on commonality in terms of shared understandings and behaviors, or what he would term the "normative sense" of community (Dewey, MW9, p. 88). He makes this point in multiple places in his work and he is clear that communities are not geographic places, but rather the provisional product of social processes by people that bind themselves to one another through the development of shared habits of thought, action, and belief (e.g., Dewey, MW12, pp. 8, 26; MW5, p. 163; MW14, p. 228). Furthermore, Dewey viewed schools as communities because they

were simply a smaller and more localized product of the social processes of the larger community (Dewey, LW13). Dewey writes, “The school must itself be a community life in all which that implies. Social perceptions and interests can be developed only in a genuinely social medium – one where there is give and take in the building up of a common experience” (Dewey, MW14, p. 369). Considered together, I think Dewey’s interrelated theories of rights, community, and education suggests that there is an inherent interpretative or hermeneutic quality to the social processes that he understands to characterize the social processes that constitute these concepts. That is, the normative basis of a community is a fluid and constructed position that is grounded in the way a group of people interpretatively generate and observe meaning within their own social processes and lives. My position is supported by Singer’s reading of Dewey in which she understood his position to support the interdependence of rights and democracy, where the latter entailed collaboratively “organized intelligence” of democratic communities (Singer, 1999, p. 123). Singer offers further support for my position in connecting Hans-Georg Gadamer’s conception of horizon within the context of her pragmatist theory of rights to characterize the communal manner in which she understood people acquire and interpret aspects of their social identities. Below I will argue that this tentative view of Dewey’s communal-based conception of rights as inherently hermeneutic presents a possible solution to the problems of educational rights and access for students with ID.

My reading of Dewey’s communal-based conception of rights carries potentially important consequences for the way FAPE is interpreted and enacted in local educational communities. As I have interpreted it, there are philosophical assumptions inherent to the concept of FAPE that commit local educational communities to determining educational

need and responding to them in proscribed ways. Specifically, the empirical data generated by educational evaluations forms the foundation for all subsequent decision-making concerning the educational needs of the student and how access to educational resources should be distributed in response. Applying Dewey's conception of rights to FAPE would call for greater flexibility regarding how state and local educational agencies interpret and enact it in their educational practices in limited ways. That is, a local school and/or school district could be afforded increased flexibility regarding how they use educational evaluations, how they determine the educational needs of students with disabilities, and how they distribute access to educational resources to meet those needs. While educationally relevant disability law does accord some flexibility to state and local educational agencies in some aspects of the special education process (e.g., IDEA § 1401 (5) (A) (i and ii) and (19) (A)), this flexibility does not extend to the implementation of the defining features of FAPE being discussed here (e.g., IDEA § 1407 (a and b)). The philosophical justification for this recommendation, again, lies in Dewey's entwinement of rights, community, and education that I have argued to support the view that he understands an inherent hermeneutic quality to characterize the social processes that produce and maintain them. There are notable limits to the kind of flexibility that I am suggesting here, and I should not be read as recommending that schools can interpret federal in whatever way they choose. Rather, I am gesturing toward the possibility that the essential anti-discrimination aspects of educationally relevant disability law can remain intact, while further empowering local educational communities to improve how they serve students with disabilities.

4.3.4 Revisiting the Three Implicit Conditions of FAPE

Here I will return to the three conditions that I have argued to attend the current conception of FAPE to consider how they might change for students with ID when considered on a Deweyan view of rights. Condition (1) required IEP teams to determine educational need and distribute access principally on the basis of educational evaluations. On a Deweyan view, local educational communities would be allowed to deploy educational evaluations, determine the educational needs of students with ID, and distribute access to educational resources with greater flexibility than what is currently permissible. This position is echoed and supported in scholarship that supports the need to change how educational evaluations are used to inform educational decision-making during the special education process (e.g., Cole et al., 2020; Frey, 2019; Taylor, 2018). As a result, IEP teams could potentially be empowered to develop a more robust conception of educational need by taking seriously forms of student learning and development that are minimized through the use of educational evaluations.

Condition (2) required educational decision-making to distribute access to educational resources that address all areas of a student's learning and development. On a Deweyan view, the increased flexibility accorded to local educational communities could enable IEP teams to support forms of learning and development that are minimized through the use of educational evaluations. Furthermore, it could allow IEP teams to prioritize the value of student communities as an essential educational tool when distributing access to educational resources for students with ID. This position is broadly supported in scholarship that supports the need for educational practices to support a more robust vision of student learning and development in contrast to the current narrow view that prioritizes

cognitive and academic forms (e.g., Brock & Schaefer, 2015; Downing, 2010; Kurth et al., 2018; Meir & Knoester, 2017; Westheimer, 2015). This change could take the form of increasing the provision of educational services that address social, emotional, and/or vocational forms of learning and development, as well as reducing the priority of service time grids as a way of structuring the delivery of special education services.

Condition (3) required the distribution of access to educational resources to produce the best possible learning and developmental outcome for students. On a Deweyan view, this would require local educational communities to expand access to general education resources for students with ID to better enable all community members to benefit from the normative rights that govern institutional practices. This position is widely supported in empirical and disability scholarship that advocates for the increased inclusion of students with ID that continue to receive significantly less access to general education settings in comparison to other student populations (e.g., Downing, 2010; Jackson et al., 2009; Smith, 2010; Wehmeyer et al., 2021). While I am not suggesting that full inclusion should be mandated for students with ID, affording increased flexibility to local educational communities could produce an increase in the inclusion of students with ID that research suggests is beneficial to their learning and developmental outcomes.

To summarize, I have developed a view of Dewey's theory of rights as both communal and hermeneutic in the sense that the shared understandings that he takes to both inform and are the product of social processes can be extended to apply to issues concerning educational rights and access for students with ID. Specifically, I have argued that Dewey's theory of rights can be read to support a theory of communal hermeneutics that justifies affording greater flexibility regarding how local educational communities

interpret and enact FAPE in their educational practices. Furthermore, I have argued that it is reasonable that this increased flexibility could better position IEP teams to ensure the educational rights of students with ID by satisfying the three conditions that I have argued to attend FAPE. Affording increased flexibility to local educational communities could enable the development of more robust and creative articulations of educational need (condition 1), enable a less mechanical and developmentally responsive distribution of access that harnesses community as an educational tool rather than formal legal preference (condition 2), and enable better learning and developmental outcomes for students with ID that carry the potential to contribute more significantly to their overall flourishing both in K-12 and postsecondary stages of their lives (condition 3). Considered together, my position suggests that it is possible to alter how FAPE functions to benefit students with ID without the explicit need to engage in the arduous process of rewriting federal legislation.

4.3.5 Dewey, the Self, and the Aims of Special Education

An important point that has been implicit in the present examination has been the purpose or aims of special education for students with ID. Dewey's own work in education asked a similar question regarding the aims that he observed in the traditional education of his day. His response was that the student was incorrectly conceptualized, which produced educational practices designed to produce educational growth in a misunderstood and ultimately ineffective way. I have applied Dewey's general position toward the analysis of educational rights established in educationally relevant disability law as they concern the distribution of access for students with ID. A central conclusion of the present examination is that the enactment of FAPE in educational practices does not benefit all students to the

same extent and empirical studies have revealed various negative or harmful effects for students with ID. Here I want to more closely consider the purpose of special education as it can be understood to be informed by the liberal conception of the student and the two philosophical assumptions analyzed in the present examination. Furthermore, to apply Dewey's conception of the self in an attempt to explore how it might alter that purpose in ways that are beneficial for students with ID through the potential resolution of some of the problems considered here.

Educationally relevant disability law contains multiple statements regarding the overall purpose or aim of special education. In a broad sense, the IDEA states that the purpose of special education is the provision of FAPE to all students with disabilities (IDEA § 1400 (d) (1A-1B)). This and similar statements that also appear in Section 504 express a legal purpose for special education, which is to ensure the civil rights of children with disabilities by protecting them against various forms of discrimination (Rehabilitation Act § 504 (a)). Aspects of the present examination have raised important questions regarding whether this is realized in educational practices for students with ID. In a narrower sense, the purpose of FAPE and its associated rights is to prepare students with disabilities to participate in existing postsecondary education, employment, and independent living opportunities. Support for this interpretation can be found in both the Rehabilitation Act (§ 2 (3) (A-F)) and the IDEA (§ 1400 (d) (1A – 1B)). The purpose of both FAPE and special education as it appears in educationally relevant disability law reveals the existence of an overarching or external aim that governs educational practices for students with disabilities. For my purposes, the aim of special education established in educationally relevant disability law suggests that such services operate in the service of a

specific vision of postsecondary life that entails the development of skills and abilities that are considered prerequisite for participation in it. Furthermore, this form of postsecondary life is most appropriate for the rational agent that is the centerpiece of liberal philosophical and political theory.

A central focus of the present examination has been to reveal important ways in which key philosophical assumptions are inherent within educationally relevant disability law that prevents students with ID from fully benefitting from its enactment in educational practices. I have shown that there are two philosophical assumptions that collectively comprise an a priori liberal conception of the student that informs the central rationale that governs the distribution of access to educational resources for students with disabilities. Furthermore, the liberal conception of the student does this by grounding the value and use of educational evaluations as the foundation for determining educational needs and distributing access to educational resources to provide FAPE. When viewed within the overarching purpose of special education described in educationally relevant disability law, such evaluations can be understood to operate in the service of a capacity threshold associated with postsecondary life. That is, educational evaluations function to identify educational needs in terms of specific forms (individualized, rational) and degrees (age appropriate) of capacity, which then informs the distribution of access to the most appropriate educational resources to address them. As such, the evaluation process of qualifying for special education services and the subsequent decision-making process that serves to distribute access can be understood to operate against the background of a capacity threshold associated with postsecondary life.

The concept of a capacity threshold comes from disability scholarship and is a term that broadly indicates a feature of one or more social structures that function to exclude individuals that are unable to satisfy the implicit performative conditions of inclusion. Specifically, I have adopted the term from Simpican's (2015) work as a way of conceptualizing inclusion as a conditional status. Robert McRuer's concept of "compulsory able-bodiedness" similarly captures this idea insofar as it applies to the inclusion of students with disabilities (McRuer cited in Goodley, 2017, p. 51). Some examples of this concept appearing in scholarship includes its application to topics that include the political inclusion of people with intellectual disabilities (Simpican, 2015), the social inclusion of people with disabilities (McRuer in Goodley, 2017; Rimmerman, 2013), citizenship inclusion of people with intellectual disabilities (Altermark, 2018), and the moral status and inclusion of people with intellectual disabilities (Taylor cited in Tremain, 2018). A common example of a capacity threshold might be the availability of steps in front of a public institution (e.g., library), but the absence of a ramp that can function to exclude people with mobility disabilities from accessing the resources located inside. An example that is more specific to education is the common use of norm-referenced tests during the special education evaluation process that serve to compare a student's performance to that of a normative sample of their peers (Courtade & Pennington, 2018). Educational decision-making that alters a student's access to general education resources on the basis of this data suggests that a capacity threshold governs inclusion that requires a student to satisfy minimal conditions of performance.

Note that I do think the idea of preparing students for challenges that they may face in the future has value for educational policy and practice. Despite that point, the

establishment of an overarching purpose for special education in educationally relevant disability law suggests that educational practices operate in the service of individual students with disabilities insofar as they align with that purpose. That is, the manner in which special education practices identify and address the educational needs of students with disabilities is grounded in a narrow understanding of student learning and development that would enable them to participate in a specific view postsecondary life.

An important aspect of Dewey's critique of the traditional education of his day was the role of external aims in governing the educational process. He wrote of traditional education, "The main purpose or objective is to prepare the young for future responsibilities and for success in life, by means of acquisition of the organized bodies of information and prepared forms of skill" (Dewey, LW13, p. 7). This view of education placed its value and ultimate purpose in a distant future that may not align with the purposes of the student or their family. An external aim, for Dewey, was problematic because it was "externally imposed" or "laid down from above" upon the educational process by supplying its contents and overall purpose in an outside-in manner (Dewey, MW9, p. 116). By contrast, he argued that the only appropriate aims were "natural" in the sense of developing intrinsically through the student's experiences, and the value and purpose of such an aim is restricted to their meaning for the student in interacting with aspects of their environment (Dewey, MW9). Furthermore, Dewey argued that the only aim of education in the grand sense "is to enable individuals to continue their education, or that the object and reward of learning is continued capacity for growth" (Dewey, MW, p. 108). As such, the educational process should be geared toward enabling students to progressively learn to learn through their own experiences in an ever-expanding way.

On Dewey's view, there are two central problems that arise from the conception of the purpose of special education established in educationally relevant disability law. First, it establishes an external aim in the form of a specific vision of postsecondary life that serves to structure educational curricula and practice from the outside-in. This external aim serves to minimize the positive powers of students with disabilities in the sense of treating their experiences, interests, and goals as "traits to be suppressed" (Dewey, MW9, p. 56). Second, this and similar external aims are predicated on a misunderstanding of growth in the sense that student learning and development occur in preparation for a distant future. On this point, Dewey writes, "Growing is not something which is completed in odd moments; it is a continuous leading into the future" (Dewey, MW9, p. 56). His meaning is that the only aim of growth is more growth, and any ascription of an end point is not only artificial but also distorting of the meaning of growth itself. While Dewey did not expressly discuss capacity thresholds in his work, he broadly opposed external standards as a means of characterizing the student and/or directly informing the contents or direction of their educational development. This view is further supported by his rejection of the use of IQ testing in education to hierarchize students according to a supposedly universal standard of human intelligence (Danforth, 2008). I have argued elsewhere that both points noted above are grounded in Dewey's central criticism of traditional education as it concerns the conceptualization of the student as a being characterized by an absence of positive powers in relation to full-fledged adults. By extension, I understand Dewey's positive conception of progressive education to begin from a reconceptualization of the student as a being possessing positive powers that alters the meaning of growth and how educational practices function to enable it.

Dewey's twin theories of aims and growth provided a substantial critique of the traditional education of his day, and I think both can be applied in a similar manner to the purpose of special education as it is established in educationally relevant disability law. The stated purpose of special education as a vehicle for equipping students with disabilities with the skills and abilities needed to participate in a specific vision of postsecondary life would satisfy Dewey's characterization of an external aim. As such, educational practices can be understood to emphasize the forms of learning and development that are considered essential for realizing that external aim. I have associated a similar effect with two key philosophical assumptions regarding the student that produce a liberal conception of the student that serves to establish the priority of individualized, rational, and empirically accessible forms of learning and development, which is observable in the value and use of educational evaluations for the special education process. As noted above, the liberal conception of the student is the being for whom liberal society is viewed as most appropriate, and educational policy and practice can be understood to develop the former for inclusion in the latter. On a Deweyan view, reconceptualizing the liberal conception of the student as a situated being that is both constructed and constructing through its ongoing experiences disrupts the connection between the external aim of postsecondary life and the educational practices that are intended to facilitate its realization. It does this by placing the student's experiences, interests, goals, and agency at the center of educational practice. As a result, the meaning of growth becomes relative to the individual student rather than an external aim that may or may not hold meaning for them.

There are at least two important ways in which retheorizing the student and rejecting the external aims for special education established in educationally relevant

disability law can affect educational practices. First, the emphasis on specific forms of student learning and development is removed from the special education process because they no longer align with the overarching purpose of education. I think this change would most notably affect the way educational evaluations are used to determine educational need, as well as how special education services are deployed to address them. More broadly, because special education practices are no longer defined by enabling students with disabilities to participate in a specific form of postsecondary life, they can be used to benefit these students by supporting their own interests and goals in more creative ways. As noted elsewhere in the present chapter, this point is supported by scholarship that advocates for changes regarding how educational evaluations are used for special education decision-making (e.g., Cole et al., 2020; Frey, 2019), as well as an expansion of what kinds of student learning and development are valued within our current test-centric policy and practice (e.g., Meier & Knoester, 2017; Westheimer, 2015). Second, the meaning of FAPE and its enactment in educational practices can be expanded in a similar manner. As described above, the provision of FAPE carries a dual significance in the sense of providing anti-discrimination protections, and to facilitate the participation of students with disabilities in postsecondary life. Reconceptualizing the student along Deweyan lines serves to retain the former, while potentially altering the latter along the lines described above. This change would allow essential civil rights protections associated with FAPE to remain in place, while enabling a varied and expanded use of special education resources to be viewed as being ensured in educational practices. This point is supported in scholarship that lauds the value of the anti-discrimination protections established in educationally relevant disability law and similar federal legislation, while also remaining

productively critical in how that legislation and its enactment in educational practices could be improved to the benefit of students with disabilities (e.g., Agran et al., 2020; Jackson et al., 2009; Ryndak et al., 2014; Smith, 2010; Wehmeyer et al., 2021). Considered together, adopting a Deweyan self serves to reject the external aims of special education established in educationally relevant disability law, while calling for an expansion of the aims that are viewed as acceptable for students with disabilities to pursue through their participation in public education. These and similar changes might allow for different and better uses of special education resources that align with an expanded understanding of FAPE that retains its essential civil rights protections, while no longer binding special education to remediating specific skills in the service of a specific aim.

4.3.6 Conclusion

The purpose of the present chapter has been to extend the consequences of the philosophical policy analysis conducted in Chapter three to two distinct areas of application. The first area of application is theoretical and specifically concerns the manner in which the student is conceptualized within educational policy. Having demonstrated the need to retheorize the liberal conception of the student in Chapter Three, I have attempted to articulate a provisional and Deweyan conception of the student. The defining features of a Deweyan conception of the student include (1) the process character of the student, (2) the communal character of the student, and (3) reframing rationality as one tool among others that the student can develop and apply to varying degrees to navigate aspects of their environment. This conception specifically contrasts with the LCS by (1) denying the acontextuality of the student, (2) denying the essential individualism of the student, and (3)

denying rationality as the defining feature of both the student and their respective learning and development.

The second area of application that I considered in Chapter Four was the potential consequences that a Deweyan conception of the student might carry for key areas of educational policy and practice that have been the focus of the present examination. To provisionally explore this possibility, I conducted a thought experiment with the intention of tracing out some possible ways that retheorizing the student along Deweyan lines could reasonably result in the expansion of access to general education resources for students with ID, thereby demonstrating the theoretical and practical viability of a middle ground. These areas principally included (1) disability theory in education, (2) educational decision making concerning the distribution of access for students with ID, (3) ER as they are formulated in educationally relevant disability law and enacted in educational practices, and (4) the purpose of special education. Regarding (1), a Deweyan conception of the student resists the importance of articulating an ontology of disability in favor of identifying the benefits or harms associated with different ways of conceptualizing its meaning as it may influence educational processes that affect students with ID. Regarding (2), retheorizing the student along Deweyan lines could eliminate the priority of educational evaluations to allow IEP teams to seriously consider other forms of learning and development as it concerns the determination of educational need and the distribution of access to educational resources for students with ID. Regarding (3), Dewey's theory of rights in conjunction with his conception of the student reasonably supports affording increased flexibility to local educational communities regarding their interpretation and enactment of FAPE as it concerns the determination of educational need and the

distribution of access in response. Regarding (4), a Deweyan conception of the student could produce an expansion of what is currently recognized as the purpose of special education to allow for a recognition of forms of learning and development that may not expressly prepare students with ID to participate in a specific vision of postsecondary life. My treatment of each of these areas reflects an attempt to sketch out some ways that I think aspects of educational policy and practice that govern the distribution of access might be interpreted or function differently in response to an alternative conception of the student.

CHAPTER 5.

5.1 Introduction

The purpose of this final chapter is to offer some brief remarks to conclude my dissertation project. I will begin by summarizing the major points that I have developed across each chapter. Next, I will return to the example of Luke, who I briefly introduced in the first chapter, to serve as an illustrative vehicle for considering how my position might have affected his experience with the special education process. Finally, I will identify some major takeaways for the reader and some possible directions for the project going forward.

5.2 Summary of Chapters

The central purpose of my project has been to identify and examine a set of relationships as I understand them to contribute to the maintenance of a longstanding problem. In Chapter One, I identified this problem as the consistent lack of access that students with ID receive to general education settings and services that empirical studies have reported to negatively affect their learning and developmental outcomes. Furthermore, this empirical problem is not interpreted as such within the context of educationally relevant disability law, which maintains that students with disabilities have a right to access the educational resources deemed appropriate for their educational needs. A review of the inclusion literature revealed that a stalemate existed between two dominant positions that contrastingly argue in support of maintaining the status quo or enabling the full inclusion of students with disabilities in general education settings. Both positions also reflected the limited use of philosophical resources that often emphasized political and

ethical dimensions of the problem to the minimization of ontological and epistemological dimensions. In response, I proposed to use aspects of John Dewey's work to interrogate the relationship between the distribution of access, educational rights as they are established in the law, and two key philosophical assumptions implicit in policy that establish a liberal conception of the student. The thesis that I sought to demonstrate across subsequent chapters was that the problem was a product of key philosophical assumptions inherent within policy that established a liberal conception of the student that governed the distribution of access to educational resources in ways that negatively affect students with ID. Furthermore, I argued that the expanded use of philosophical resources would enable the problem and its potential resolution to be framed and pursued within a middle position that is currently absent from the inclusion literature.

The subsequent chapters of my project have advanced the examination of my thesis in different and important ways. In Chapter Two, my aim was to provide context to the problem identified in Chapter One by developing a selective presentation of the history of American special education practice and law that emphasized the relationship between access and evaluation. This selective history demonstrated that the American educational system has denied students with ID access to public education resources since its formation in the late 19th century, and that empirical evaluations served as the principal tool for legitimizing and enacting this ongoing denial. Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act, or what I have collectively termed educationally relevant disability law throughout the present examination, were enacted to address the historical exclusion of children with disabilities from accessing public education resources. Despite these noble intentions, educationally relevant disability

law maintained the relationship between access and empirical evaluations by formally codifying it in federal law. Furthermore, this relationship was written into the conceptual foundations of the educational rights of students with disabilities in the concept of free and appropriate public education (FAPE), which governs the distribution of access to educational resources through its structuring of the special education process.

In Chapter Three, I conducted a philosophical policy analysis that was designed to demonstrate two points that are central to my overall project. First, the conceptualization of educational rights in the sense of FAPE serves to establish at least three conditions regarding the distribution of access to educational resources that must be satisfied in order to ensure such rights in educational practices. My analysis showed that none of these conditions are currently being met for students with ID, thereby demonstrating that the educational rights of this population are not being ensured in educational practices. Second, the failure to ensure the educational rights of students with ID can be plausibly explained through an examination of two key philosophical assumptions that are inherent within policy that govern the distribution of access in ways that negatively affect this population. Using aspects of John Dewey's work, I showed that the value and use of educational evaluations for determining the educational needs of students with disabilities and thereby governing the distribution of access to appropriate educational resources is predicated on what I have termed a liberal conception of the student. Briefly, a liberal conception of the student is an a priori and metaphysical conception that posits the student as (1) an individualized and rational being (2) whose essential characteristics are accessible and measurable using empirical instruments. The practical effect of this conception is that educational evaluations are used as the central means of generating data to inform

educational decision making regarding the educational needs of the student and the distribution of access to educational resources to address them. I have argued that educational policy and practices grounded in the liberal conception of the student are harmful for students with ID because they prioritize the forms of learning and development that this population often struggles to demonstrate, while minimizing or omitting a consideration of other forms of learning and development such as social, emotional, and vocational. As a result, students with ID are less likely to have access to general education resources and their associated benefits in comparison to other student populations.

My aim in Chapter Four was to explore the potential consequences that my position might carry for aspects of educational policy and practice. I began by articulating an alternative and Deweyan conception of the student that could plausibly replace the liberal conception of the student that I have argued to be implicit within educationally relevant disability law. The former conception departed from the latter conception by positing the student as (1) a processual rather than static being, (2) a communal rather than individualized being, and (3) reframing rationality as a tool rather than a standard. As a result, the student is no longer conceptually aligned with empirical evaluations, which removes the priority ascribed to them within the law and allows practitioners to determine educational need and to distribute access to educational resources in different ways that potentially carry greater benefits for students with ID. I then conducted a thought experiment over the remainder of the chapter by applying a Deweyan conception of the student to four areas of educational policy and practice that govern the distribution of access to educational resources for students with ID. These four areas included (1) disability theory in education, (2) educational decision making concerning the distribution

of access for students with ID, (3) ER as they are formulated in educationally relevant disability law and enacted in educational practices, and (4) the purpose of special education. I showed that the application of a Deweyan conception of the student could plausibly alter aspects of the special education process to allow for expanded access to general education settings and services for students with ID. Furthermore, that these changes provisionally demonstrate a plausible conceptual and practical middle ground between the two dominant positions (e.g., status quo and full inclusion) within the inclusion literature that are concerned with resolving the problem of access/inclusion for students with ID.

5.3 Empirical Effects of My Position

Before concluding, I wanted to briefly return to the example of Luke that was introduced at the outset of my project in order to consider how my position might positively affect his circumstances. Recall that Luke was a former student of mine who, at the time, was a second-grade student receiving special education services under the label of intellectual disability. Prior to receiving his IEP, he was full of zest and loved to come to school and interact with his teachers and classmates. He would often complain when the weekend came because he would have to stay home and would not be able to see everyone at school until Monday. Due to some of his ongoing struggles with learning and demonstrating select academic and adaptive skills, he was referred for evaluation and subsequently qualified for special education services. Similar to the example of Stacy presented in Chapter Three, Luke did not respond well to receiving special education services in accordance with his IEP. Specifically, he did not like leaving the general education environment that included familiar routines, established relationships, and

instructors that he trusted and enjoyed working with. He began resisting participating in instructional activities while in separate special education settings, and he seemed to withdraw from his classmates while in general education settings. Luke even began to miss a significant amount of school, which surprised both his teachers and classmates. Unlike the example of Stacy, Luke's circumstances were not resolved through a revision of his IEP before the conclusion of that school year, and his family relocated to another state prior to the start of the following school year.

I think every teacher has had at least a few students that they wish they could have served a bit differently, and Luke is one of mine because I do think the system failed him in important ways that could have been prevented. Here I want to briefly consider if and how the position that I've developed in the preceding examination may have benefited Luke and students like him. The evaluation and decision-making processes were conducted in accordance with the law, which means that both prioritized the empirical data generated by educational evaluations when determining Luke's educational needs and the educational resources that are most appropriate for supporting them. That is, the IEP team determined what Luke could do, what he could not do, and how best to deploy special education resources in response through the use of tools that prioritized his weaknesses in a limited range of academic and adaptive areas of learning. As a result, this process minimized some of his key strengths in areas that included communication, emotional intelligence, and relationship development. Furthermore, it failed to recognize the importance of established routines and relationships that comprised his school-based community as essential elements in his academic and adaptive learning. Despite those issues, Luke's IEP team was not legally or educationally enabled to arrive at their collective decisions in any other way.

For example, the IEP team did not have the option of not using empirical evaluations as a part of their assessment of Luke, nor could they elevate the value of other forms of learning and development in relation to the empirical data that they produced. Furthermore, they did not have the flexibility of interpreting and enacting FAPE in a way that departed from the priority of educational evaluations and the data they produced for the purposes of educational decision making. The IEP team also did not have the flexibility to recognize, value, and deploy special education resources toward supporting areas of Luke's learning and development that departed from those enshrined in grade level curricula that are designed to prepare all students to participate in a specific vision of postsecondary life.

I have argued that the foundation of the policies and practices that were responsible for Luke's poor experiences with special education services is a specific and liberal conception of the student. Before anyone on the IEP team had ever met Luke, he was posited as a student that aligned with what educational evaluations could measure, and that what they could measure amounted to the most important aspects of learning and development for educational decision making. By contrast, if the IEP team and the policies that govern their practices had posited Luke along Deweyan lines, then I think important aspects of the evaluation and decision-making processes could have been conducted differently in at least two ways. First, retheorizing the student would have removed some of the priorities that I have argued to be inherent to educationally relevant disability law and the educational practices that it structures that increase the likelihood that students with ID are placed in separate special education classrooms. These priorities, again, include individualized and rational (cognitive) forms of learning and development that are accessible to educational evaluations, which are precisely the forms that this population

struggles to demonstrate. Removing such priorities would have enabled Luke's IEP team to develop a more nuanced and robust conception of educational need by conducting a more balanced consideration of relevant sources of information that valued Luke's emotional intelligence on par with the empirical data concerning his math skills. Second, retheorizing the student would reaffirm the pluralism that is at the heart of special education theory and practice by acknowledging that many forms of learning and development hold value for the flourishing of students with disabilities. Doing so would have afforded Luke's IEP team greater interpretative flexibility regarding how to provide FAPE that may have allowed them to support the development of his math skills without recourse to invasive interventions (e.g., separate special education classrooms) that produced harmful effects for his overall learning and development. Furthermore, his IEP team would have been able to acknowledge the value of Luke's emotional intelligence in relation to his math skills, and elected to protect the former instead of being required to prioritize the latter due to its established relevance to postsecondary life.

5.4 Conclusion

To conclude, I will attempt to distill my project down to what I take to be its central take-aways. I will begin by identifying and briefly discussing the points that I believe I have successfully demonstrated over the course of my examination. I will then briefly discuss the scope of my project by briefly discussing items that I have not attempted to address in my project, but the reader may feel should have been addressed therein. Lastly, I will conclude my dissertation by briefly considering future directions for my work and the position developed here.

The genesis of this project was a rather obvious problem that I think is revealed in the findings of the empirical literature on inclusion. I take these findings to collectively show that special education evaluation and decision-making practices frequently do not result in providing access to the most appropriate educational resources to support the educational needs of students with ID. Or, at a minimum, such practices often restrict their access to educational resources that confer less educational benefit. The broader question that I think this problem raises is whether the special education process is successful in providing FAPE for students with ID. My project can be read as an attempt to show that educationally relevant disability law and its enactment in educational practices fails to reliably provide FAPE to students with ID and, by extension, fails to ensure their civil rights.

The first three chapters of my dissertation reflect an attempt to demonstrate that claim through analyses of recent scholarship, select legal and institutional history, and a close reading of educationally relevant disability law. In chapter one, I showed that both the conceptual and empirical literatures on inclusion did not adequately engage with the problem. This scholarship fails to interrogate the philosophical dimensions of policy, and so omits a vital element for understanding special education mechanisms for distributing access to educational resources for students with disabilities. In chapter two, I showed that educationally relevant disability law retained and even canonized the relationship between access and evaluation in its articulation of FAPE. Doing so created a problematic continuity with special education practices of the past that these laws were intended to sever by predicating the provision of FAPE on the use of evaluation instruments that had functioned to justify the exclusion of students with ID from accessing public educational resources for

over a century. In chapter three, I show that select conditions for the provision of FAPE established in educationally relevant disability law were not reliably enacted in educational practices for students with ID. Doing so serves to extend the findings reported in the empirical literature on inclusion by connecting classroom placements with policy-based evaluation and decision-making practices that fail to reliably distribute access to the best educational resources for this population. I also showed that the failure to reliably provide FAPE for students with ID is a product of the philosophical assumptions within policy that establish a conceptual and legal alignment between the student, educational evaluations, educational decision-making, and the distribution of access to appropriate educational resources.

In chapter four, I explore how educators might reasonably and effectively respond through changes to the law and educational practice if my position is correct. I show that one reasonable response to the failure to ensure FAPE for students with ID is to retheorize how the student is conceptualized within policy. Doing so would disrupt the conceptual and legal alignment between the student and aspects of the special education process that prevent increasing the access that students with ID typically receive to general education resources. Doing so would enable changes to student evaluation and decision-making processes, the interpretation and enactment of FAPE by IEP teams, and rethinking the purpose of special education services and their role in facilitating the wellbeing and overall flourishing of students with disabilities. The changes that I propose are intended to support expanding access to general education resources for students with ID, which represents a conceptual and practical middle ground between what I observe to be the two dominant positions in the inclusion literature.

It is important to note that the goal of my project has not been to develop firm alternatives to what I view as the aspects of policy and practice that are problematic for students with ID. Rather, I have attempted to identify and sketch out realistic possibilities that I believe would become available to educators if the student were to be retheorized within educationally relevant disability law. Doing so has added meaningful knowledge to scholarship on the inclusion of students with ID by approaching a longstanding empirical problem using expanded philosophical resources in order to frame and examine it in an updated and potentially productive way. This effort has included addressing select gaps in the inclusion literature that primarily includes an emphasis on ontological themes in educational policy and practice, and the application of Dewey's work and American Pragmatism more broadly to themes related to disability and special education. My consideration of the potential impact that a retheorized conception of the student might carry for the aspects of educational practice and policy that govern the distribution of access to educational resources for students with ID is intended to be read as a series of plausible potentialities. That is, if my central thesis and the arguments in support of it are accepted, then it is plausible to accept that the way in which aspects of educational policy and practice could be interpreted and function differently in response to a different conception of the student that would effectively expand inclusion opportunities for students with ID. I acknowledge that further philosophical and empirical scholarship are needed to confirm these conclusions. As such, I present them here as tentatively established within the limited scope of the present analysis.

Here I will also note several interesting and potentially productive directions that my project could take going forward. First, my analysis of policy could and maybe should be

developed into a stronger version of my position that demonstrates that FAPE cannot be provided for students with ID due to the role of the liberal conception of the student, in contrast to the weaker version that appears in chapter three that holds that FAPE is not currently being provided to this population. Second, if my position is correct, then the liberal conception of the student also potentially carries negative affects for other student populations through its function in governing aspects of the special education process. Examining if and to what extent other student populations are affected by this implicit feature of policy would provide further support for the need to examine and potentially revise the philosophical assumptions expressed there. Third, the development of concrete alternative practices for educators to use when evaluating and making education decisions is an essential extension of my project. An important consequence of my position is the need to identify and/or develop new ways for educators to evaluate students, distribute access to educational resources, and more broadly to establish practices that reliably provide FAPE for students with disabilities. Fourth, developing an updated articulation of FAPE is another important extension for my project because retheorizing the student would disrupt the conceptual and legal foundation of FAPE as it appears in educationally relevant disability law. Doing so would necessitate a rearticulation of FAPE to improve its effects on aspects of special education practices and students with disabilities. Fifth, perhaps the most extensive consequence of my project is indicating the need to revisit the purpose of special education in response to the retheorization of the liberal conception of the student. That is, rejecting that narrow model of studenthood requires educators to reconsider how special education functions to support and benefit students with different capacities, interests, and life goals.

Overall, my project has examined what I think is one possible way to frame and potentially resolve the pervasive lack of access that continues to negatively affect students with ID. My analysis has shown that FAPE is not reliably provided for students with ID in K-12 public schools as a result of select philosophical assumptions implicit within policy that govern aspects of the special education process. I have characterized these philosophical assumptions in the sense of a liberal conception of the student that establishes important priorities within educational law and practice that function as key factors in continuing to deny students with ID access to general education resources and their associated benefits. Retheorizing the way that the student is conceptualized in educationally relevant disability law is necessary for enabling the appropriate changes to occur that may result in the expanded but not full inclusion of students with ID in general education settings.

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Scholastic and Professional Honors

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Professional Publications

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2023 Daskalakes, D., & Cahill, M. Forthcoming. "We're All Pretty Welcoming: Inclusion of Children with Disabilities in Library Storytime Programs." *Journal of Early Intervention*.