

The Education of Special Needs Children in Uganda: Legal Policy Lessons from the United States

D. BRIAN DENNISON, J.D.
Uganda Christian University

Abstract

Policy makers, educators, and activists in developing nations such as Uganda can learn a great deal from the American special education legal framework. Although different in terms of scope, structure, culture and resources, the American framework is a vibrant system in terms of intention, experimentation, and innovation. Regardless of any value judgments as to its effectiveness and appropriateness, a close inspection of the American framework is instructive within the Ugandan context. It spurs critical thinking about special education law and policy, suggests means for improving the system, and promotes certain values. The intent of this article is to inspire informed assessment of the legal and regulatory framework that guides, enables and accompanies the provision of special education services in Uganda, with the hope of increasing dialogue that will lead to improvement. This process will also serve to provide strategic perspective for those seeking to promote and champion the rights of special needs students in Uganda and in other developing nations.

Keywords: *special education, special needs, education law, United States special education policy, American special education legal framework, Ugandan special education, developing nations*

D. Brian Dennison is Lecturer in the Faculty of Law at Uganda Christian University. His *Juris Doctorate* is from the University of Georgia. He is currently a Ph.D. candidate at the University of Cape Town.

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I. Introduction¹

The American approach to special education is unique. It is grounded in an extensive statutory and regulatory framework. Its robust dispute resolution framework provides opportunities for collaboration and reconciliation while also pitting parents versus school districts in legal proceedings. The American special education experience is rich in ideas, models, good intentions and hard-earned experience. Thus it is an ideal subject for comparative analysis.

In the case of Uganda, the American legal framework pertaining to special education offers prospective possibilities and instructive lessons. The legal framework regarding the provision of special education in Uganda is skeletal and largely undefined. The domestic law places emphasis on establishing structures and capacity building.² While certain organizations look to the provision of education to persons with disabilities as a human rights issue, human rights instruments are short on roadmaps and practical approaches for implementing meaningful special education reform.

Admittedly, there is a substantive imbalance within this paper weighted toward American law. This imbalance is not the result of any intent by the author to promote the export of the American special education system. The American legal framework is far more detailed and expansive. There is simply much more substance to cover on the American side. Moreover, the author's personal experience is heavily weighted on the American side.

This paper is not an attempt to promote and import American ideas and methodologies. Instead the intent is to inspire informed assessment of the legal and regulatory framework that guides, enables and accompanies the provision of special education services in Uganda.

At its best, comparative legal analysis shares experiential wisdom and sparks innovation. Through comparative method, problems can be viewed with a "deeper perspective" whereby "a number of alternative solutions may come into sight."³ Viewing law through a comparative lens "not only stimulates the jurist's imagination, but reveals the strength and weaknesses of particular situations."⁴

The author hopes this paper will be part of a dialogue that will improve the provision and delivery of special education services in Uganda. By comparing the status of rights of special needs students in Uganda with those in

the United States we can better determine what the future might hold. This process will also serve to provide strategic perspective for those seeking to promote and champion the rights of special needs students in Uganda and in other developing nations.

II. The Education of Children with Special Needs in the United States

A. Historic Context

Up until the latter part of the 20th Century, the treatment of children with disabilities in American education was marked by institutional exclusion and segregation. American families shouldered the responsibility to care for and educate the disabled. A 1935 Kentucky Court espoused widely held prejudices when it wrote that a “person ‘of unsound mind ... is, as to all intellectual purposes, dead; and such a thing, destitute of intellectual light and life.’”⁵

Substantive education policy in the United States from prior generations reflected the attitudes pronounced by that Kentucky court. Compulsory education laws exempted children with mental or physical disabilities thus allowing parents to keep children with disabilities out of the mainstream educational environment.⁶ Widely held legal and political consensus did “not require the State to provide a free education program, as a part of the common school system” for “the feeble minded or mentally deficient” on the grounds that children of “limited intelligence, are unable to receive a good common school education.”⁷

B. The Changing Legal Environment

There is no Constitutional right to education in the United States.⁸ Moreover there are no express rights regarding persons with disabilities in the American Constitution. Nonetheless, the educational rights of children with disabilities in the American education system are grounded in Constitutional principles.

The seminal American case in the area of educational rights is *Brown v. Board of Education*.⁹ In *Brown*, the United States Supreme Court overturned their prior decision in *Plessey v. Ferguson*,¹⁰ which had upheld the constitutionality of segregated schools based on the premise that segregated schools could be “separate but equal.” At the core of *Brown* is the recognition that separate is not equal and that exclusion from the status quo educational environment is improper.

In the 1970's the core principles in *Brown* began to bubble up in the context of students with special needs. In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*¹¹ a Federal District Court recognized that children with disabilities are capable of benefiting from an education and must be provided with access to a free public education. Later a Federal District Court in for the District of Columbia held that no disabled child “shall be excluded from a regular school assignment by a rule, policy or practice of the Board of Education” unless that child receives “adequate alternative educational services suited to the child’s needs” and “a constitutionally adequate and prior hearing and periodic review of the child’s status, progress, and the adequacy of any educational alternative.”¹²

In 1975 the US Congress eclipsed this judicial upwelling with the passage of the Education for All Handicapped Children Act.¹³ This landmark legislation was subsequently renamed the Individuals With Disabilities Education Act (IDEA).¹⁴ Congress passed this legislation to address inadequacies in educational services provided for children with special needs.¹⁵ According to the Congressional findings issues in support of this legislation, at the time of enactment four million of the eight million children in the United States with educational disabilities received inadequate educational services.¹⁶ One million of those children counted as receiving inadequate education actually received no services.¹⁷

The IDEA establishes expansive requirements for the provision and delivery of special education services. The statutory framework is further supplemented by extensive regulations as well as a robust body of judicial authority interpreting the metes and bounds of the Act. The IDEA mandates that school districts and States that receive certain federal educational funding must provide a free appropriate public education (FAPE), to the maximum extent appropriate in the least restrictive environment (LRE).¹⁸ The IDEA establishes an extensive legal framework to accomplish that core mission statement. The framework includes *inter alia* “child find” and evaluation procedures, the recognition and categorization of disabilities, and mechanisms for facilitating parental involvement, stakeholder collaboration and individualized consideration of each child.

C. Current Educational Environment

The education of students with special needs is a massive undertaking in the United States. According the American Institute for Research, \$50 Billion was spent on special education services in the 1999-2000 school year.¹⁹ The costs have gone up by at approximately 60% since that time.²⁰ The average

expenditure for a special needs child almost doubles the average costs of services for other children.²¹

The United States Department of Labor's Bureau of Labor Statistics reports that there were approximately 473,000 special education teachers employed in the United States in 2008.²² This number does not include the many special education service providers that are not special education teachers.

In terms of students, the US Office of Special Education Programs reported that 6,081,890 students in the United States received special education services in the 2006-2007 school year. A large percentage of these students have what might be characterized as mental or psychological disabilities. Of the six million students in 2006-2007, only 1% were categorized as "orthopaedic impairment" and less than 2% received services based on a visual or hearing impairment. On the other hand, 44.6 of students were served based on a "learning disability," 19.1% based on "speech or language impairment," 8.6 based on "mental retardation/intellectually disabled," 7.5% based on "emotional disturbance" and 3.7% based on "autism."²³

The United States has extensive institutional and educational support for teachers who serve children with special needs. A large number of American tertiary institutions offer programs in special education at the undergraduate, masters, and doctoral degree levels. Special education teachers in all States must be licensed. In most instances, prospective special education teachers must obtain at a bachelor's degree and the complete of an approved training program in special education teaching in order to be licensed.²⁴ Many special education teachers must undergo more extensive and lengthy training periods than general education teachers. Some States require a master's degree or some additional certification or educational requirement beyond a four-year degree.²⁵

III. The Uganda Legal Framework Concerning the Education of Students with Special Needs

A. The Right to Education in Uganda

Uganda is home to a number of noteworthy events in the context of education rights and provision over the past two decades. These advancements include rights proclaimed in the Uganda Constitution and the establishment of Universal Primary Education and Secondary Education. The right to education is also enshrined in international instruments that have been ratified in Uganda.

The 1995 Constitution of Uganda establishes certain rights with respect to education. Article 30 of the Constitution provides that “(a)ll persons have a right to education.” Article 34 provides that “(a) child is entitled to basic education which shall be the responsibility of the State and the parents of the child.” Objective XVIII of the Ugandan Constitution further provides that “(t)he State shall promote free and compulsory basic education.”

The Ugandan Parliament took a dramatic step towards effectively realizing educational rights when it passed Universal Primary Education (UPE) in 1997. Under UPE the Ugandan Government mandates that all primary-level students can attend a school without having to pay fees and parents and teachers association charges.²⁶ Following the introduction of UPE, gross enrolment in primary school increased from 3.1 million in 1996 to 7.6 million in 2003.²⁷ UPE also resulted in a significant increase in public expenditure for education increasing from 2.1% of GDP in 1995 to 4.8% of GDP in 2000.²⁸ The Objectives of UPE are to 1) “provide the facilities and resources to enable every child to enter and remain in school until the primary cycle of education is complete; 2) make education equitable in order to eliminate disparities and inequalities; 3) ensure that education is affordable by the majority of Ugandans; and 4) reduce poverty by equipping every individual with basic skills.”²⁹ The education of children with special needs is not a point of emphasis in the UPE initiative. However, it has undoubtedly increased the availability of some form of primary school education to children with special needs.

In 2007 the Ugandan Government followed up on its offering of Universal Primary Education by declaring the provision of Universal Secondary Education (USE). “USE is defined as the equitable provision of quality post-primary education and training to all Ugandan students who have successfully completed primary leaving examination.”³⁰ USE officially covers lower secondary education (Senior 1 to Senior 4) for all students who score between 4 and 28 on the Primary Leaving Exam.³¹ In terms of actual delivery of services, the provision of USE is not on par with its official mandate as the number of USE schools and the schools’ geographic dispersion are inadequate to serve the students officially eligible to receive USE. Moreover the qualifications of instructors at both USE and UPE schools are quite minimal due to the large demand for teachers spawned by the policy. Nonetheless, the launch of USE marks another ambitious step by the Ugandan Government to increase the educational services available to its children.

Uganda is a party to several international instruments that proclaim a right to education. The International Covenant on Economic, Social and

Cultural Rights provides that the right to education includes the right to free, compulsory primary education as well as an obligation to develop secondary education that is accessible to all.³² The right to education is also a point of emphasis in Article 26 of the Universal Declaration of Human Rights³³ and Article 17 of the African Charter of Human and Peoples Rights³⁴ and Article 28 of the Convention on the Rights of the Child.³⁵

The African Charter on the Rights and Welfare of the Child provides a detailed treatment of the right to education.³⁶ Article 11 of that Charter provides that “every child shall have the right to education.” The Charter further provides that State parties “shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular (a) provide free and compulsory basic education (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means; (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates; and (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.”

B. The Rights of Peoples with Disabilities in Uganda

Ugandan law addresses the rights of persons with disabilities. Article 35 of the Uganda Constitution provides that “(p)ersons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential,” and that “Parliament shall enact laws appropriate for the protection of persons with disabilities.” Moreover, Article 32 requires the State to “take affirmative action in favour of groups marginalised on the basis of ... disability.”

Other Ugandan legislation addresses the rights and issues of special concern of persons with disabilities. Such legislation includes the 2006 Persons with Disabilities Act, the Workers’ Compensation Act, the 2006 Employment Act, the National Social Security Fund Act, the Local Government Act of 1997 and the 2005 Parliamentary Election Act which address rights, protections, specifications and or provisions for persons with disabilities at some level.

In the context of education and the rights of children, the two most important legislative acts in Uganda are the Persons with Disabilities Act and the Children Act. The Persons with Disabilities Act requires the Government

to develop policies that provide children with disabilities with access to education³⁷ as well as a duty to minimize disabilities among children.³⁸ The Children Act pronounces the State's duty to implement measures and policies in order to a) assess a child's disability at an early age; b) provide appropriate facilities for treatment and rehabilitation of children with disabilities; and to c) "afford children with disabilities equal opportunity in education, subject to progressive realization."³⁹

In terms of international instruments, Uganda is a signatory of the Convention on the Rights of Persons with Disabilities (CRPD)⁴⁰ having ratified both the Convention and its Optional Protocol on 25 September 2008.⁴¹ The CRPD has extensive provisions concerning the rights of persons with disabilities that cannot be adequately explored at this time. Most significantly for the purpose of this paper Article 24 of the CRPD provides as follows:

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
 - (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:
 - (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory

- primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - (c) Reasonable accommodation of the individual's requirements is provided;
 - (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

The language of the CRPD appears to qualify the legal requirement known in the United States as “mainstreaming” as a human right of children with disabilities. To reiterate from the block quote above, the CRPD provides that children with disabilities are not be excluded from education and they shall “access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities where they live.”

The CRPD's mainstreaming requirement is more than mere words in Uganda.⁴² It provides direct, if to some extent aspirational, guidance on mainstreaming that education officials have adopted as guiding policy. Ugandan educational officials are cognizant of the requirements set forth in the CRPD and they are officially adopting a policy with the hope of complying with the CRPD's mandate.

In addition to the CRPD, Article 13 of the African Charter on the Rights and Welfare of the Child provides that “(e)very child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.” Article 13 further provides that State parties shall “subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible

social integration, individual development and his cultural and moral development.”⁴³

C. Rights in the Courts in Uganda

Despite considerable progress in terms of drafting legislation and ratifying relevant international treaties, present indications from the Ugandan judiciary indicate that legal recourse is of limited value in the realization of rights for persons with disabilities.

Ugandan courts have demonstrated an unwillingness to weigh in on matters of economic and social rights. In the *CEHURD*⁴⁴, the Constitutional Court of Uganda held that claims arising out of the Government’s provision of health services to women bearing children were barred by the political question doctrine. This doctrine bars the judiciary from considering the legality of certain matters that are deemed best left to the determination of the legislative or executive branches of the government.⁴⁵ In the case of *CEHURD* the implementation of health policy was deemed to be a matter best left outside the court.

Similarly an attempt to bring an action challenging the constitutionality of budget cuts to the funding of education programmes in Uganda failed to generate results in a Ugandan High Court.⁴⁶ The Assistant Register of the Civil Division of the High Court refused to grant any order blocking the budget on the grounds that it was not the place of the court to destabilise government programmes or to usurp the authority of government to provide such services. Thus the Assistant Register applied a form of the political question doctrine to initially thwart the litigation.

In the context of disabilities, a Ugandan High Court recently dismissed a claim asserting failures by the City of Kampala and Makerere University (a public University) to make their premises and buildings accessible.⁴⁷ In *Legal Action for People with Disabilities v. Attorney General and Another* Justice Stephen Musota applied a pragmatic and forgiving approach that allowed the City and the University to continue to work towards achieving improved accessibility at their own pace. The High Court gave both government entities the benefit of the doubt and a presumption of good faith with respect to the efforts they had made thus far to meet the legally established standards of accessibility.

Looking at the larger picture and general resource restraints as opposed to individual rights and claims the High Court held: “in the instant case the applicants seem to imply that their own right must be enjoyed irrespective of the negative effects that it may have on public interest, the costs to the respondents and the overall costs to other (students) or people. The applicants

ought to know that the enjoyment of their rights is not absolute. It has to take in to account the rights of others as well as public interest.⁴⁸

Given the recent cases discussed above, litigation appears to be an unlikely means for addressing legal deficiencies pertaining to the education of children with special needs in Uganda. Courts are hesitant to tell the Ugandan Government how to spend money and implement policies. Courts are willing to apply permissive standards when assessing the Government's compliance with human rights standards that pertain to both disabilities and to economic and social rights. Finally, the overriding spectre of limited resources in the country as a whole tends to undercut the effectiveness of cases concerning individualized harm.⁴⁹

IV. Key Comparative Distinctions Between the United States and Uganda

There are many key distinctions between the American and Ugandan approaches to the education of students with special needs. These distinctions include large discrepancies with respect to the amount of resources and the extent that special education services are provided, America's purposeful engagement with litigation as a tool for enforcing public school compliance with legal requirements, and the American emphasis on addressing cognitive and psychological disabilities.

A. Disparity in Financial Resources

There is a clear gap in resource capacity and allocation between the United States and Uganda in context of public education generally. According a 2011 report, Ugandan schools in the Universal Primary Education (UPE) programme are given 435 Ugandan Schillings⁵⁰ per student per quarter.⁵¹ Other reports paint a comparatively rosier picture of funding.⁵² However, even if funding is somewhere between \$5 to \$10 per month per student, such funding levels are still hundreds of times lower than the average expenditures made on a public school students in the United States.

Funding is even more critical in the context of students with special needs. Intensive monitoring, smaller class sizes, assistive technology and other cost-intensive services can be key to the educational success children with special needs. Thus expenditures for children with special needs are normally considerably higher than the cost associated with educating the general student population. In the US expenditures for children with special needs are almost twice as high as expenditures for other students.

Ugandan officials recognize the increased need for funds for children with special needs and have called to increased funding.⁵³ Unfortunately, limited resources prevent Uganda from approaching the service delivery provided in the US.⁵⁴ A civil society watchdog group reports that “implementation of Special Needs Education policy has remained too slow and almost neglected, especially at the Local Governments levels” and notes that “[t]he vehicles provided under the initiative, for instance, have all been grounded on the pretext of no or minimal funding.”⁵⁵ This report asserts “the policy suffers from least attention within the education sector, pushing further to the fringes of socio-economic and political development of those already disadvantaged” and goes on to report anecdotal instances where deaf students were not provided teachers trained in basic sign language.⁵⁶

There are means of maximizing resources and overcoming funding limitations. For example, one Ugandan district officer in charge of the education of children with special needs indicated that nuns in his district volunteer to assist with identifying children with special needs. This story speaks to the willingness of the government to engage with partners, religious or otherwise, to enable public needs to be met. In addition, the cost of human services is also much less expensive in Uganda than the US. This enables funds dedicated to teachers and education providers to go further.

B. Disparities in Human Resources

Uganda has made major strides in educational and training of special education teachers. Prior to the 1990's, Uganda had no policy related to the training of teachers in special needs. In 1991 Parliament established the Uganda National Institute of Special Education to train special education teachers. In 1992 the Ugandan Government “established a policy on ‘Education for National Integration and Development’, pledging to support special needs education by providing funding and teacher training.”⁵⁷

Kyambogo University is a key hub for tertiary special education instruction in Uganda. Kaymbogo offers certificate, diploma and bachelor programs in special needs education. Hundreds of teachers have been trained in special education through Kyambogo's full-time and distance programmes.⁵⁸ In addition, Kyambogo and the Ministry of Education and Sports partner to offer in-service training to teachers in the field.

Despite commendable strides over the past two decades, there are severe human resource needs in Uganda in the area of special education. According to Stackus Okwaput, a lecturer in the Department of Special Needs at Kyambogo University, the numbers of trained teachers are still

“relatively small.” Moreover, regional resistance and inadequate resource allocation stymies the expansion of specialized service delivery.⁵⁹ According to a report issued by the Uganda Debt Network “[t]he implementation of Special Needs Education policy has remained too slow and almost neglected, especially at the Local Governments levels.”⁶⁰ Other reports portray an underfunded system without the human resources to adequately serve children with disabilities.⁶¹

C. Governmental Framework

One of the key distinctions between the Ugandan and American approaches to special education springs from contrasting governmental frameworks. The United States of America is a federalist system while Uganda is a Republic.

The US federal government is a relatively small player in the funding and provision of education. Delivery of primary and secondary education in the US is primarily the responsibility of local and state governments.

In terms of the education of children with special needs, the federal government provides less than 20% of the funding and is responsible for very little direct administration and services provision in the area of children with special needs.⁶² Instead, the IDEA and the related regulations manage state and local governments through legal requirements.

In Uganda, on the other hand, the central government has the primary responsibility for the implementation of UPE and USE as well as the mandate to manage and develop wider educational policies. Therefore Ugandan laws and regulations pertaining to education primarily concern how the central government will logistically and functionally carry out the business of education provision within Uganda. As a result Ugandan education laws are less directive, controlling and educationally oriented. Instead Ugandan education laws address capacity building and the establishment of structures.

D. The Role and Availability of Litigation

Another distinctive aspect of the American special education legal framework is quick and efficient access to litigation by the intended beneficiaries of special education services. Although legal recourse for the receipt of social and economic benefits in the United States is the exception rather than the norm⁶³, parents of children with special needs in the United States have the right to sue public school districts to receive a free and appropriate public education.⁶⁴ The legislative framework ensures quick access to a due

process hearing and subsequent appellate rights in federal court. The school districts have rights to bring suits as well in certain instances, although that is a very rare occurrence.

Conversely, parents of students with special needs in Uganda have no clear roadmap for legal action. Even where the law and treaties speak to rights, Ugandan courts have demonstrated the tendency to avoid engaging in the substance of legal challenges concerning the provision of economic and social rights.⁶⁵ The present emphasis in Uganda is for broader changes and policy improvement.

The Ugandan Government is unlikely to establish a mechanism that will give parents and children the right to pursue legal action against government educational providers. As long as the status quo of government court decisions in the context of economic and social rights continues it would be very surprising to see the Ugandan Government establish a hearing process for the consideration of matters concerning the provision of special education services. If the national and regional courts shift and begin to hold governments responsible through the imposition of sanctions it is conceivable that the Ugandan Government could establish a hearing scheme designed to provide efficient and pragmatic local remedies.

V. Lessons for Uganda from the United States

The balance of this paper presents lessons from the US that can be instructive in the Ugandan context. Aspects of the American system are not presented as models to be followed. The extensive differences between the US and Ugandan contexts prevent simple wholesale adoptions of American approaches. Instead, this section offers up for consideration both positive attributes and cautionary tales from the American experience.

A. Positive Aspects of the American Special Education Regime

We begin with positive aspects of the American special education regime that can serve as instructive models for special needs educational policy within the Ugandan context. Examples include mechanisms that incorporate stakeholder involvement, an emphasis on the individualized needs of children and an informed, proactive and intervention-based approach to student discipline.

1. Incorporation of Stakeholders and Emphasis on Consensus

In the US there is a consistent emphasis on the incorporation of stakeholders and achieving meaningful consensus in special education matters.

The decision-making engine of the special education process in the US is the “IEP Team.” “IEP” stands for “Individualized Education Program.”⁶⁶ American students who receive special education services receive those services in accordance with the IEP developed for that student.⁶⁷ Essentially the IEP becomes the “law” for the subject student.

The IEP Team is the legal organ charged with the responsibility of developing the IEP. Federal Regulation 34 C.F.R. 300.321 provides that the IEP Team for each child must include 1) the parents of the child; 2) at least one regular education teacher of the child⁶⁸; 3) at least one special education teacher⁶⁹; 4) an empowered and qualified representative of the school system⁷⁰; 5) a person qualified to interpret the instructional implications of evaluation results⁷¹; 6) an individual who has special knowledge or special expertise regarding the child who may be included at the discretion of the school system or a parent; and whenever appropriate 7) the child with the disability.

The IEP Team is an inclusive and egalitarian body. There is no chair of the IEP Team. No one individual is officially in charge. Instead IEP teams are egalitarian bodies where the members seek to reach agreements through consensus.

The process through which the IEP Team develops, reviews and revises an IEP is set forth in 34 C.F.R. 300.324. There is no mechanism for majority rule to force objectives through against the will of minority team members. In addition, it is improper for a party to come to the IEP meeting with a pre-packaged educational plan that the team members must accept or reject. Instead, the IEP Team members are required to develop the educational plan within the meeting itself after all of the stakeholders are given the opportunity to participate and share information.

At the center of the collaborative process are the parents. School systems must take steps to ensure that parents of a child with a disability have the opportunity to meaningfully participate in IEP Team meetings. In order to ensure meaningful participation school systems must 1) provide parents with the opportunity to inspect and review all educational records; 2) provide advance notice of the IEP meeting; 3) schedule the IEP meeting at a mutually agreed upon time and place; 4) provide parents with prior notice outlining the purpose of the meeting and key aspects of the regulatory framework governing the IEP process; 5) involve the parents in educational placement decisions; 6) use methods to ensure parent participation if parents are unable to attend; 7) document efforts to accommodate the parents when the parents do not attend; 8) use interpreters when necessary to make

sure the parents understand what transpires at the meeting; and 9) provide the parents with a copy of the child's IEP at no cost to the parent.⁷²

At first blush this IEP Team design might appear unwieldy or unworkable. In truth, the IEP process is not easy. Many teachers, parents and staff dislike IEP meetings and view them as procedural hassles and sources of stress. However, there are virtues and benefits to this challenging process.

The IEP Team model is not something that Uganda is likely to adopt wholesale. However, there are several components within the IEP Team model that could be beneficial in Uganda. These components include the priority on parental input and involvement and the emphasis on informed consensus.

It is no accident that parents are the first category of IEP Team member listed within the American regulatory framework. This emphasis on parents could be incorporated within the Ugandan framework. Parents are an important resource to schools. They often know their children best. Parents can also be valuable team members in the education of their children especially when a child needs additional instruction and assistance outside of the classroom. A mechanism in Uganda that formally incorporates parents of children with special needs into both the educational design dialogue and the pedagogical process could provide extensive benefits at a low cost to Ugandan taxpayers.

In Africa there is reverence for a traditional ethic known as "Ubuntu" meaning roughly as "a person is a person through other people." Ubuntu places an emphasis on the good of the whole and values consensus. The emphasis on consensus adopted within the American IEP framework is consistent with the values of Ubuntu.

One could argue that the power behind the consensus building in the American system is the threat of litigation. After all, the reason consensus must be reached is that either the parent or the school board has the right to litigate the educational placement if there is no consensus. However, the threat of litigation is not necessary to a system that values consensus. In the Ugandan context the inherent cultural value placed on consensus could provide the basis to facilitate meaningful efforts to achieve consensus.

The American emphasis on consensus also helps to ensure that the child is assessed in a meaningful way. IEP members from the educational providers are encouraged to be diligent in their assessment of the special needs child when they know that their assessment will be subject to a consensus building exercise. The need to obtain the consensus of others in an open forum can help ensure quality.

A consensus model also invests more individuals in the life and educational of a child with special needs. Identifying, recognizing and engaging the key players in the life of a child with special needs can serve to reinforce the roles that other community members play in the life of a child with special needs.

2. An Individualized Approach

A defining quality of the American special education framework is its individualized approach. This quality is seen most clearly in the mandate for the development of individualized educational plan.⁷³ However, the legal and regulatory framework is replete with other examples of an emphasis on the needs and characteristics of the individual student. Examples include the requirement that public agencies conduct individual evaluations of children⁷⁴, the right to independent educational evaluations⁷⁵, the extensive designation of specific learning disabilities⁷⁶, and requirements for individualized plans and assessments in the context of disciplinary management of students with special needs.⁷⁷

In Uganda large class sizes and limited resources make individualized approaches difficult. Nonetheless, the educational system must recognize that certain learners require different approaches in order make progress and achieve success in the classroom. These needs go beyond the obvious special needs of students such as those with disabilities pertaining to vision or hearing.

The importance of an individualized approach is heightened when an educational system places emphasis on mainstreaming. In Uganda the desire to meet the CRPD's mandate for mainstreaming could result in educational harm if legal compliance is seen as simply a matter of placing special needs children in the same classrooms as other students. Care must be taken to provide the mainstreamed students with special needs the tools and guidance they need. Evaluation and assessment is key to ensuring that special needs students are given an appropriate and beneficial education in a mainstreamed environment. In Uganda, a rigid national curriculum and examination systems adds to the challenge of individualizing educational delivery.⁷⁸

An individualized approach requires resources and human energy. Nonetheless, it is essential for the provision of a meaningful education to many students. The support needed to achieve a more individualized approach in Uganda would need to be "multi-sectoral, starting with the family at the grass-root level, then the community level, the district level and finally the national level."⁷⁹ Hopefully, Ugandans at all levels of the educational

policy and delivery system will appreciate the highly individualized nature of special education and will dedicate the resources and efforts needed to incorporate more flexible and individualized approaches within the Uganda educational system.

3. Discipline

The discipline of students with special needs is a controversial issue in the US.⁸⁰ The American student who is receiving or who should be receiving special education services is entitled special treatment and protections in the context of discipline.

In *Honig v. Doe*⁸¹ the United States Supreme Court held that short-term changes as a result of disciplinary measures including suspensions of up to ten days are permitted under the IDEA, but changes in placement of a longer duration are not. *Honig* marked the beginning of a new era where the special status and protection of special needs children obtained clear legal recognition. In the wake of *Honig*, Congress and the Department of Education established a legislative and regulatory framework that sets out clear limitations on the discipline of children with special needs and establishes special procedures, interventions and assessments to be performed in matters involving the disciplinary management of children with special needs.⁸²

The American framework includes several unique protections and procedures with respect to the discipline of students with special needs. For example, in cases where disciplinary action would result in a change of educational placement, the student's IEP team must conduct a "manifestation determination" which involves a thorough review of a student's file in order to determine if the conduct that is the subject of the disciplinary action "was caused by, or had a direct and substantial relationship to the child's disability" or "if the conduct in question was the direct result of the (school district's) failure to implement the IEP."⁸³ In addition, the framework requires the development and implementation of a specially designed "behavioral intervention plan" based on a "functional behavior assessment" under certain circumstances in order to address disciplinary issues in an informed and proactive manner.

Many view the special protections in the area of discipline as double standards that erode the ability of teachers and staff to administer discipline. Others see the disciplinary framework as an endorsement of blame shifting that takes the onus for good behaviour off of the individual child. Others contend that special education students who are aware of their special

protected status become difficult to manage and have the license to act out with impunity.

However, before dismissing the special disciplinary provisions in the US we should consider the core values that the disciplinary framework is founded on. Certainly children's disabilities and psychological disorders can affect their behaviour. The desire to treat all children the same does not change this fact. Moreover, interventions and behaviour management strategies can be effective. If such strategies can positively impact student behaviour they should be encouraged. Certainly the design, implementation and execution of such strategies require far more work than simply removing a student from the classroom environment. Therefore a system needs to have measures in place to encourage that such actions are taken as in many instances teachers will choose the easier and less effective options.

In Uganda student discipline is rarely implemented on an individualized basis. Moreover, in Uganda little emphasis has been placed on identifying students with behavioural problems as students with special needs. Instead, students with special needs are often thought of as simply the blind, deaf and wheelchair bound. The global psychological and educational community recognizes and appreciates disabilities and disorders that substantially impact behaviour.

The American procedural framework concerning the discipline of students is quite onerous. However, it forces teachers and administrators to appreciate the relationship between disability and behaviour. Regardless of what is specifically done in Uganda, it is crucial that approaches to student discipline be informed by current knowledge and best practices.

4. Economics, Pragmatism and Integrity

Special Education presents difficult challenges regarding the use and allocation of resources. Even in the US, the allocated resources are inadequate resources to provide children with special needs with the best possible education. When resources are limited the law must adapt to those realities. This principle is relevant in the Ugandan environment where many Constitutionally declared rights amount to unfunded mandates. In such situations pragmatic decisions must be made in terms of what rights will be enforced at all costs, some costs or at no cost at all.

For the purposes of comparative analysis we will consider two American legal standards concerning the use and allocation of resources in the context of special education. The first standard concerns the relevance of financial considerations when determining the educational services that a child with

special needs is entitled to receive. Should children be legally entitled to the best education a society can provide? Are considerations regarding the use of resources for other students relevant when determinations are made about the educational services to be provided to an individual child? The second standard concerns integrity and the inherent value of all human life. Are issues pertaining to the education of children with special needs where costs should not be a consideration and where economic utility is trumped by the rights of the student with special needs?

American special education law provides that all children should receive a free and appropriate education (FAPE). In light of this generally worded standard, courts have been left to define and circumscribe what amounts to FAPE. The US Supreme Court established the basic test for determining what amounts to FAPE in *Board of Education v. Rowley*, 458 U.S. 176 (1982). In *Rowley* the Court established a two-part test which provides that when school districts comply with the procedural mandates of IDEA and has developed an IEP “reasonably calculated to confer educational benefits” on the child, compliance with the IDEA is largely assured.

The Court in *Rowley* found that “(i)mplicit in the congressional purpose of providing access to a free appropriate public education is the requirement that the education to which access is provided be sufficient to confer some benefit upon the handicapped child.”⁸⁴ Justice Rehnquist’s majority opinion held that “the ‘basic floor opportunity’ provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”⁸⁵ The resulting requirement is satisfied when a school district provides “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”⁸⁶

Educational offerings that are “reasonably calculated to confer educational benefits” need not be the best educational offerings available for the child. Lower courts have derived various practical applications for the second prong of the *Rowley* test. The Sixth Circuit held that while FAPE does not require students to receive maximum potential benefit, the benefit must be more than minimal. *Doe v. Smith*, 879 F.2d 1340, 1341 (6th Cir. 1989). The 11th Circuit held that under *Rowley* districts are merely obligated to provide students with disabilities with a “basic floor of opportunity” which is further delineated as meaningful “access to a public education,” and not meaningful “educational benefit.” *JSK v. Hendry County School Board*, 941 F.2d 1563, 1572 (11th Cir. 1991). Nonetheless, other courts have held that the *Rowley* standard requires more than “mere

trivial advancement”⁸⁷ and that merely producing some “minimal academic advancement” is not sufficient.⁸⁸

Given the “floor level” *Rowley* standard, it is not surprising that economic considerations play a part in decisions regarding the provision of educational services. Under the American legal framework is it “generally recognized that cost is a factor that legitimately may be considered in the placement of children.”⁸⁹ Limited resources and dilemmas regarding proper resource allocation are at the heart of the policy behind considering cost as factor. According to the 6th Circuit Court of Appeals “(c)ost is a proper factor to consider since excessive spending on one handicapped child deprives other handicapped children.”⁹⁰ As public resources for education continue to diminish the problem of resource allocation and costs considerations will undoubtedly grow.⁹¹

This brings us to the second issue in this section: Are there instances where economic considerations are inadequate or ethically deficient when considering the requirement of providing education to children with special needs? In the American context there are two clear instances where matters of resource allocation and utility are deemed legally lacking. The first such instance arises in the context of severely low functioning students and the second concerns mainstreaming.

From a legal sense, no child is a “lost cause” in the United States. No American child may be excluded from a free and appropriate education based on the child’s low functioning level or seeming incapacity to learn. This legal right to access to education in all cases is known as the “zero reject policy.”⁹² This legal standard is grounded in integrity rather than economic pragmatism. It is an instance where the right to access education and to be treated with equal dignity trumps other concerns.⁹³

The second instance where integrity prevails over pragmatism is in the context of mainstreaming. In the American system schools are prohibited from depriving disabled children of the opportunity to be educated with nondisabled children on the grounds of cost containment.⁹⁴ In other words financial concerns should not play a role in excluding students from the regular classroom environment. This right is not as clear-cut as the “zero reject rule” as schools are permitted to consider the impact on the class or the regular education teacher when determining the appropriateness of a mainstreamed placement.⁹⁵ Therefore, schools have some licence under the law to mask financial motives for placement under other motives. Nonetheless, the right to not be excluded is a matter of integrity and financial concerns should not be permitted to extinguish this right, at least not facially.

Policy makers, courts, lawyers and citizens in Uganda are all too familiar with the legal repercussions of financial limitations. The Constitution is replete with affirmative rights (i.e. entitlements) that will not be actualized in the foreseeable future due to an inability to fund their actualization. Nonetheless, the American example demonstrates that there are lines a society can draw where it chooses rights over financial concerns. In the special education context Uganda may choose to meet certain needs and offer certain services as a matter of integrity regardless of pragmatic economic concerns. A society can decide that certain rights are more important than money and can set their laws accordingly.

5. Continuum of Alternative Placements

Public school districts in the United States “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.”⁹⁶ Examples of the continuum of placements that should be offered include “instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.”⁹⁷ This continuum of placements is needed in order for a school system to meet its obligation to place a student in the “least restrictive environment.” The obligation to offer a continuum of services also reflects the importance of offering educational and related services that are individually tailored for a particular student.

Uganda could adopt a similar requirement and ensure that a continuum of placement options is offered for Ugandan students with disabilities. Options should not be limited to inclusive placements in regular classrooms and special schools such as those for blind and deaf students. Other options along the continuum should be presented and considered on a case-by-case basis. Officials in Uganda should also employ special education providers who are able to deliver services in different settings along continuums.

6. Related Services

The American legal framework recognizes the importance of “related services” in the delivery of appropriate education to children with special needs.⁹⁸ Related services are defined as “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities

in children, counselling services, including rehabilitation counselling, orientation, and mobility services and medical services for diagnostic or evaluation purposes.”⁹⁹

The sheer scope of resources listed as related services in the American regulatory framework demonstrates the extensive human resource capital and financial resources necessary to provide the services that students with special needs can benefit from. While Ugandan educational providers might not be in the position to replicate the panoply of related services available in the United States, Uganda can certainly consider ways of making the delivery of some related services a component in its special education framework. Tertiary institutions in Uganda can also consider the list of beneficial related services when developing educational offerings to train future related service providers.

7. Extended School Year Services

The American special education framework recognizes the importance of offering educational services to some students when the regular school term is not in session.¹⁰⁰ The American framework provides that each public school system “must ensure that extended school year services are available as necessary to provide” a free and appropriate public education.¹⁰¹ These services are to be provided at no cost to the parents of the child.

In the Ugandan context it is important to recognize that some students need to receive services when the regular school term is off session or on break in order to make sure that student makes educational progress. This principle is related to the broader principle discussed above regarding the importance of adopting an individualized approach in the special education context.

8. Transition Services

The American special education framework acknowledges the importance of preparing special education students for life outside the classroom. Transition services “means a coordinated set of activities for a child with a disability that...is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation.”¹⁰² Transition services should be “based on the individual child’s needs, taking into account the child’s strengths,

preferences, and interests; and include... (i) instruction; (ii) related services; (iii) community experiences; (iv) the development of employment and other post-school adult living objectives; and (v) if appropriate, acquisition of daily living skills and provision of a functional vocational environment.”¹⁰³

Transition services are crucial to practical education of students with disabilities. Students should be equipped with life skills that will best suit their individual needs. Students with special needs should be empowered to live as independently as reasonably possible. Life skills and employability are key components to independent living.

An appropriate transition plan for one student might not work for another. Therefore transition plans need to be individualized.

Uganda would be well served by implementing a framework requiring the establishment and development of individualized transition plans for students with special needs.

B. Cautionary Tales from the American Special Education Framework

Some aspects of the American special education framework are instructive in a negative sense. These aspects generate more “don’ts” than “do’s.” Here we will address the litigious nature of the American system, the latent economic discrimination within the American system and the relentless pressure of paper work.

1. Litigious Culture

One of the most controversial aspects of the American special education framework is the prominent role of litigation. If matters cannot be resolved through consensus, the American system funnels parents and schools into a rapid and intensive litigation process. The stakes of the litigation process are raised by the ability of parents to recover attorneys’ fees if they prevail in the litigation. The emphasis on litigation in special education is contrary to broader policies that protect government bodies from the hazards of litigation such as sovereign immunity.

The spectre of litigation impacts the special education environment in many ways. Teachers face the pressure of knowing that their actions in the classroom and the documents they generate might face scrutiny in court. The presence of attorneys in an individualized education plan (IEP) meeting can change an otherwise collaborative culture into one of posturing and mistrust.

Actual litigation itself has its own costs. The litigation process is stressful and expensive. Stakeholders are forced to put time and energy into the

preparation of a case. This diverts limited resources from the education of children with special needs. Relationships between parents, teachers and staff can be strained or broken in the process. Litigation can cause school systems to objectify students as a project that must meet certain goals. Litigation can also place parents in a position where they are required to prove the educational and developmental failures of their own child for sake of their legal position.

The high costs of litigation in the United States results in several unfortunate dynamics as well. First of all, those that can afford legal representation in special education disputes tend to get more of what they want from school systems. The ability to pay for a private lawyer gives rich parents more power within a framework that emphasizes litigation.

2. Paperwork Pressure

The highly regulated nature of special education law in the US creates a large volume of compliance-related paperwork. American special education teachers often complain of being “swamped by” paperwork. The focus on paperwork can take away from teaching and planning. Nonetheless, good paperwork is important in tracking the performance of students and to ensure compliance with the individualized educational plan.

In the Ugandan context an abundance of paperwork would present additional problems due to poor document management techniques and the higher marginal expense of documentation. Also, large class sizes make the challenge of generating individualized paper work particularly daunting in the Ugandan context. Given the specific challenges in the Ugandan educational environment, care should be taken so that any documentation requirements are workable but not overwhelming or unfeasible.

3. The Price of Complexity

The complexity of the American special education framework comes with a cost as well. The sheer amount of statutory law and regulatory provisions can be overwhelming even to people who have careers in special education. A complicated statutory and regulatory framework would present serious challenges to many Ugandan families with special needs children.

It is also important that any laws and regulations passed in Uganda be enforceable and doable. Oftentimes in Uganda laws are passed without the economic and human resource mandate needed to effect and enforce the laws. The Ugandan law makers and regulators must resist the temptation of passing laws and regulations that sound good on paper but ring hollow in

fact. A simpler and more functionally pragmatic legal framework is needed in the current Ugandan setting.

VI. Conclusion

Ugandan policy makers, educators, and activists can learn a great deal from the American special education legal framework. Although different in terms of scope, structure, culture and resources, the American framework is a vibrant system in terms of intention, experimentation, and innovation. Whether the American framework produces a well-functioning system is open to debate. Regardless of any value judgments as to its effectiveness and appropriateness, a close inspection of the American framework is instructive within the Ugandan context. It spurs critical thinking about special education law and policy. It suggests means for improving the system and promotes certain values that translate into the Ugandan context. Clearly this is an instance where a comparative legal analysis can inform, caution and inspire.

Notes

1. The citation in this article is in conformity with THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (19th ed. 2010)
2. See e.g. The Uganda National Institute of Special Education Act, (1995) Cap. 138 (Uganda).
3. RUDOLF SCHLESINGER, HANS BAADE & MIRJAN DAMASKA, COMPARATIVE LAW: CASES, TEXTS, MATERIALS, 5th Ed., pp. 15, 22 (1988).
4. Arthur Von Mehren, *The Comparative Study of Law*, 67 TUL. CIV. L.F. 43, at 47 (1991-92) cited by Christopher Whytock, *Legal Origins, Functionalism, and the Future of Comparative Law*, 2009 B.Y.U. LAW REV. 1879 (2009).
5. *Jenkins v. Jenkins' Heirs*, 32 Ky. 102, 104 (1934).
6. JAMES RAPP, EDUCATION LAW, Vol. 4, Sec. 10.03[2][a], (2004).
7. *Department of Public Welfare v. Haas*, 15 Ill. 2d 204, 154 N.E.2d 265, 270 (1958).
8. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).
9. *Brown v. Board of Education*, 347 U.S. 483 (1954).
10. *Plessy v. Ferguson*, 163 U.S. 537 (1896).
11. *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971).
12. *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.C. 1972).
13. 20 U.S.C. § 1400 *et seq.*
14. The former IDEA is now referred as the Individuals with Disabilities Education Improvement Act (IDEIA) due to the renaming of the Act by Congress in its reauthorization in 2004. P.L. 108-446 (2004)
15. 20 USC 1400 *et. seq.*
16. 20 USC 1400 (c) (2) (B), (C)

17. *Id.*
18. 20 USC (a) (1), (5)
19. JAY G. CHAMBERS, THOMAS B. PARRISH & JENNIFER HARR, AMERICAN INSTITUTES FOR RESEARCH, WHAT ARE WE SPENDING ON SPECIAL EDUCATION SERVICES IN THE UNITED STATES, 1999-2000 (2004)
20. Clare McCann, *Federal Funding for Students with Disabilities*, (New America Education Policy Brief) 2014, http://newamerica.org/downloads/IDEA_6_25_2014_FINAL.pdf
21. CHAMBERS ET AL., *supra* note 19, "The additional expenditure to educate the average student with a disability is estimated to be \$5,918 per student. This is the difference between the total expenditure per student eligible for special education services (\$12,474) and the total expenditure per regular education student (\$6,556).
22. UNITED STATES BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, 11th Ed. (2010-11), <http://www.bls.gov/oco/ocos070.htm>
23. Note that 10% of the students were served under the label "other health impairment."
24. United States Bureau of Labor Statistics, *supra* note 22.
25. Due to the substantial need for special education teachers within the United States many states offer alternative routes to becoming a licensed special education teacher. Often times these programs are open to individuals with bachelor degrees in disciplines other than education. These programs often have a period of classroom instruction followed by a period of supervised instructional work in the field.
26. UPE did not result in free primary school education as parent were still required to contribute school supplies and other items necessary for the provision of education. In some instances this included the provision of bricks and labor for the construction of classrooms.
27. SECRETARIAT OF THE INTER-REGIONAL INEQUALITY FACILITY AT THE OVERSEAS DEVELOPMENT INSTITUTE, POLICY BRIEF 10: UNIVERSAL PRIMARY EDUCATION, UGANDA (2006). www.odi.org.uk/resources/download/3125.pdf
28. *Id.*
29. *Id.*
30. MINISTRY OF EDUCATION AND SPORTS, THE REPUBLIC OF UGANDA, POLICY AND OPERATIONAL ARRANGEMENTS FOR IMPLEMENTATION OF UNIVERSAL SECONDARY EDUCATION (2007).
31. *Id.*
32. UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3
33. UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)
34. Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (Note: Uganda ratified this charter on 27 March, 1986)
35. Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, entered into force 2 September 1990 (Note: Uganda ratified this convention on 17 August 1990.)
36. Organization of African Unity, African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990) (Note: Uganda ratified this Charter on 17 August, 1994)
37. Persons with Disabilities Act, Sec. 5(a) (2006) (Uganda).
38. Persons with Disabilities Act, Sec. 36(3) (2006) (Uganda)
39. The Children Act, Sec. 9 (2007) (Uganda)
40. UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106
41. OFFICE FOR THE HIGH COMMISSION FOR HUMAN RIGHTS, WORKING PAPER, A REVIEW OF THE UGANDAN LEGAL FRAMEWORK RELEVANT TO PERSONS WITH DISABILITIES: COMPARATIVE ANALYSIS TO THE CONVENTION OF THE RIGHTS OF PERSONS WITH DISABILITIES (2008)
42. Author's Note: The first time the author sat down with a District Officer responsible for the education of children with special needs the District Officer opened a drawer and handed me a copy of the Convention on the Rights of Persons with Disabilities as official policy guidance on the issue of the education of persons with disabilities. Specifically he cited the Convention as the legal authority requiring mainstreaming of children with special needs within Ugandan schools.

43. African Charter on the Rights and Welfare of the Child, *supra* note 35, Article 13.
44. Centre for Health Human Rights and Development (CEHURD) and Three Others v. Attorney General, Con. Pet. No. 16 of 2011, UGCC 4, available at <http://www.ulii.org/ug/judgment/constitutionalcourt/2012/4>.
45. See *Marbury v. Madison* (1803) 5 U.S.137 at 170, where the political question doctrine was first pronounced by US Supreme Court Chief Justice John Marshall who wrote “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”
46. Andante Okenya, “Government sued over plan to reduce UPE funds” NEW VISION, May 6, 2014 at 4.
47. Legal Action for People with Disabilities v. Attorney General and Another, Misc Cause No. 146 of 2011 [2014] UGHC 42, 20 May 2014.
48. *Id.*
49. For a landmark case from the South African context that demonstrates the problem of seeking economic and social rights for an individual claimant in the context of a broad *see* Soobramoney v Minister of Health KwaZulu Natal 1997 (12) BCLR 1696 (CC).
50. This amount was equivalent of about 17 cents in US Dollars as of July of 2011.
51. *Uganda Education News: UPE Schools to Get More Funding*, UGANDAN PULSE, 28 June, 2011, <http://www.ugpulse.com/uganda-news/education/upe-schools-to-get-more-government-funding/20178.aspx>
52. According to Policy Brief 10 issued by the Inter-Regional Inequality Facility in February 2006 the Ugandan Ministry of Education and Sports officially allocated \$5 to \$8 US Dollars per month per primary school pupil prior to the roll out of Universal Secondary Education as well as providing school facility grants in addition to the per student (capitation) fees. Policy Brief available at www.odi.org.uk/resources/download/3125.pdf
53. UGANDA PULSE, *supra* note 44.
54. The author notes that several members of the PWD community and their advocates have decried the use of resource arguments to justify a lack of services to the education of children with special needs.
55. UGANDA DEBT NETWORK, CIVIL SOCIETY STATEMENT ON THE CALL FOR IMPROVED SERVICE DELIVERY OF UNIVERSAL PRIMARY EDUCATION AND PRIMARY HEALTH CARE IN UGANDA, as Presented to the Parliamentary Committee on Social Services on December 8, 2008, www.und.or.ug/pub/StatementSD.pdf
56. *Id.*
57. Stackus Okwaput, *Teacher Training in Uganda*, ENABLING EDUCATION NETWORK DIGITAL NEWSLETTER, 2006. http://www.eenet.org.uk/resources/eenet_newsletter/news10/page8.php
58. According to Okwaput, *supra* note 50: “Since 1990, 716 in-service teachers have been trained through the full-time Bachelors and Diploma courses, and between 2000 and 2003, 1,451 were enrolled on the distance courses. The number trained, however, is just a small proportion of the estimated total of 130,000 teachers employed in primary schools.”
59. *Id.*
60. UGANDA DEBT NETWORK, *Civil Society Statement on the Call for Improved Services Delivery of Universal Primary Education and Primary Health Care in Uganda*, Dec. 8 2009, www.udn.or.ug/pub/StatementSD.pdf
61. Joe Wacha, *Funding Problems Blight Special Needs Education*, UGANDA RADIO NETWORK WEBSITE, 22 Mar. 2011, <http://ugandaradionetwork.com/a/story.php?s=32357>.
62. This is a far higher percentage than the general percentage of educational costs funded by the US federal government. The higher percentage in the special education sector is due to the federal government’s special funding commitment entailed in the IDEA.
63. See e.g. *Plyer v. Doe* (1982) 457 U.S. 202 (where the denial of educational benefit to children based on their immigrant status was deemed unconstitutional despite the fact that there was no right to education under the US Constitution).
64. 20 U.S.C. § 1415
65. This was discussed with supporting case references in Section III. C above.
66. 20 U.S.C. 1412(a)(4); C.F.R. 300.112
67. The required components of the IEP are set forth in 34 C.F.R. 300.320 and include 1) a statement of the child’s present levels of performance; 2) provisions tailor to meeting the child’s needs for

- progressing in the general curriculum; 3) annual goals and means for measuring the child's performance in reaching those goals; 4) a statement of the special education and related services and supplemental services to be provided to the child; 5) an explanation of the extent to which the child will not participate with nondisabled children in the regular class and activities; 6) a statement of individualized appropriate accommodations necessary for broadly implemented assessment test; 7) projected dates for the delivery and implementation of services and modifications; and 8) information pertaining to transitional services for an child age 16 or above or any other child when determined appropriate by the IEP Team.
68. More specifically the regulation provides for "Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular classroom educational environment). 34 C.F.R. 300.321(a)(2).
 69. The regulation provides for "Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child." 34 C.F.R. 300.321(a)(3).
 70. This team member is specifically designated as "A representative of the public agency who (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) is knowledgeable about the general educational curriculum; and (iii) is knowledgeable about the availability of resources of the public agency. 34 C.F.R. 300.321(a)(4)
 71. This individual may be one of the teachers, the representative of the public agency or one of the other designated individuals included at the discretion of the parents or public agency. 34 C.F.R. 300.321(a)(5).
 72. 34 C.F.R. 300.322; 34 C.F.R. 300.351.
 73. 34 C.F.R. § 300.324.
 74. 34 C.F.R. § 300.301.
 75. 34 C.F.R. § 300.502.
 76. 34 C.F.R. § 300.309.
 77. 34 C.F.R. § 300.530(e) and (f).
 78. Kurt Kristensen, *Can the Scandinavian Perspectives on Integration and Inclusion be Implemented in Developing Countries? How far can we get? Or what can be achieved?* http://www.ispaweb.org/Colloquia/Nyborg/Nyborg%20Keynotes/Kristensen_keynote.htm
 79. Kristen Kristensen, Martin Omagor-Loican & Negriz Onen, *The Inclusion of Learners with Barriers to Learning and Development into Ordinary School Settings: a Challenge for Uganda*, BRITISH JOURNAL OF SPECIAL EDUCATION, Vol. 30, Issue 4 (2004).
 80. See e.g. Donna Ladd, *Why Johnny Can't Stay In School*, VILLAGE VOICE Aug. 28, 2001.
 81. Honig v. Doe, 484 U.S. 686 (1988).
 82. See e.g. 20 U.S.C. § 1415(k) and 34 C.F.R. § 300.530.
 83. 34 C.F.R. § 300.530(e).
 84. Board of Educ. v. Rowley, 458 U.S. at 189-90.
 85. *Id.* at 200.
 86. *Id.* at 203.
 87. Polk v. Susquehanna Intermediate Unit 16, 853 F.2d 171, 183 (3rd Cir. 1988)
 88. Hall v. Vance County Bd. Of Educ., 774 F.2d 629 (4th Cir. 1985)
 89. JAMES RAPP, EDUCATION LAW, Vol. 4, Sec. 10.03[12][f] (2004) citing Ronker v. Walter, 700 F.2d 1058 (6th Cir. 1993); and Sacramento City Unified School Dist. v. Rachel H., 14 F.3d 1398, 1404 (9th Cir. 1994).
 90. Ronker v. Walter, 700 F.2d 1058 (6th Cir. 1993).
 91. In 2008 the United States Eleventh Circuit Court of Appeals rejected the argument that the award of reimbursement for private school education was improper because such an award benefits wealthier parents who have the financial wherewithal to place their children in a private school setting to the detriment of other students with parents that are unable to afford initial placement in private school. Draper v. Atlanta Indep. School Sys., 518 F.3d 1275, 1290 (11th Cir. 2008). While the Eleventh Circuit dismissed this argument, such resource allocation argument will continue to be posited in this environment of limited public funding in the United States.

92. Timothy W. v. Rochester New Hampshire School District, 875 F. 2d 954, 960 (1st Cir. 1989) *cert denied* 493 U.S. 983 (1989). Holding that “The language of the (IDEA) in its entirety makes clear that a ‘zero reject’ policy is at the core of the Act.”
93. For an interesting presentation on modern ethical groundings behind the “zero reject policy” see Robert Ladenson, R., *The Zero-Reject Policy in Special Education: A Moral Analysis*, THEORY IN RESEARCH IN EDUCATION, Vol. 3 (2005), <http://tre.sagepub.com/content/3/3/273>
94. Hendricks v. Gilhool, 709 F. Supp. 1362 (E.D. Pa. 1989).
95. Daniel R.R. v. State Bd. Of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989).
96. 34 C.F.R. 300.115(a).
97. 34 C.F.R. 300.115(b)(1).
98. 34 C.F.R. 300.34.
99. 34 C.F.R. 300.34(a).
100. 34 C.F.R. 300.106.
101. 34 C.F.R. 300.106(a).
102. 34 C.F.R. 300.34 (a)(1).
103. *Id.*