

## **Disability law: Its impact on our children and families--The power of words (Part 1)**

*In December 2012, fellow parent/advocates John Swanson and David Graham attended a seminar on disability law and practice sponsored by the Delaware State Bar Association. Its primary audience was Delaware and Pennsylvania practicing attorneys as a part of their continuing professional development.*

We felt privileged that the sessions were opened up for other stakeholders like ourselves. The first session took us in the more recent past looking at the language of disability over the twentieth century, and the evolution of closing the gaps of the individual to the same rights and equal protections as the rest of society. The first phase was spiritual in nature. People's faith and religious beliefs promoted them to look to their creator to drive out affliction through prayer and sacraments. As medical technology grew, studies led to labeling and categorizing conditions. Such research led to experiments of rehabilitation or cure with the notion of fixing the condition. During such time, individuals were removed from society, being isolated in the so-called institutions of the past we hear about today. Currently, we have a social model in place. That is to say, "What are the decisions society can make to close the gap between ones impairment of body and mind and its consequences so that they can participate in the world?"

The World Health Organization has offered the following definitions, providing critical distinctions, and further supporting the concept of the social model:

*Impairment:* An abnormality of any physiological or anatomical structure and function

*Disability:* The consequences of the impairment ranging from mild to severe.

*Handicap:* The social disadvantage that results from the impairment

Impairments do not become "disabilities" until we experience them as such. Even then, it is a societal decision to "handicap" the individual due to their impairment.

Further, defining people exclusively by their impairment, i.e. crippled, retarded or mentally ill, has been modified to a people first rhetoric. For example, previously, one would say he or she is autistic but rather today referred to as *a person with autism*.

Societal decisions have been challenged when we look at some key Supreme Court rulings to date. Four cases were highlighted:

*Buck v Bell (1927):* The court upheld a 1924 Virginia law that promoted sterilization of an institutionalized female for the health of the patient and welfare to society. The rationale was under a medical model and sterilization was seen as a positive remedy typical of the Eugenic Movement of its time.

*City of Cleburne v. Cleburne Living Center (1985):* The court remanded back to the lower courts a local ordinance decision in the Texas that considered the establishment of a 13 bed

group home requiring a special use permit, denial by city council vote. The special use permit was applied to the group home as if it was a full scale institution. First such case that began to recognize equal protection of disabled people access to community based living

*Board of Trustees of the University of Alabama v Garrett (2001)*: Barred employees the recovery of money damages due to failure of the University to provide reasonable accommodations to modify their employment complying with the Americans with Disabilities Act (ADA). The majority of the court considered the action of the employer as rationale and defaulted to a narrow view citing the eleventh Amendment of the Constitution that prohibits any citizen from suing the state. This case illustrates the “slippery slope” of judging whether reasonable accommodations are warranted.

*PGA Tour v. Martin (2001)*: The Court found for Martin, a gifted golfer with a mobility impairment, that he could enter into the PGA tournament and if he progressed to the final rounds not be bound by the PGA policy of banning carts. The majority affirmed the public accommodation aspects of the ADA.

In future articles we will be discussing other topics covered by the seminar. These include Social Security, Supplemental Security Income (SSI), Medicaid, Medicare, Guardianship and Alternatives, Special Needs Trust. We will not only try to focus on how these laws apply directly to our children but also their parents, as many of the same benefits serve as a safety measure to stabilize families as a whole.