

The Mothers of Chapter 115

How Wisconsin Mandated Special Education for All Children with Disabilities

Barbara Pellegrini, Margaret (Peg) Olsen, Frances (Fran) Bicknell, Elaine Keller, Donna Mutschler, and Suzanne Kendrick

Editor's Note: We're proud to feature this special story looking back at how Wisconsin state statute Chapter 115 was enacted. Chapter 115 established important education rights for students with special needs in Wisconsin. This article was excerpted from an article originally printed in the Spring 2016 issue of the Wisconsin Magazine of History.

Chapter 115 of the Wisconsin Statutes has been called the “most significant occurrence in the state’s special education history in the 20th century and the fifty years prior to 1900.”

This is how it happened. We know. We were there.

Forty-five years ago, we parents, mostly mothers, became frustrated with the status quo of permissive legislation that allowed, but did not mandate, school districts to provide special education programs. Together, with the parent groups we represented, we persuaded legislators to recognize that the Wisconsin Constitution guaranteed a free public education to all children.

Background

Since Wisconsin’s founding as a state in 1848, Article X, Section 3 of the Wisconsin Constitution has guaranteed a free public education to all children. However, until parents of children with disabilities insisted on mandatory legislation in 1972, “all” did not actually mean all. As our late colleague and fellow mother, Lila Kelly, once reflected, “Nowhere in the Constitution does it say you’re only entitled to an education if you’re perfect.”

Wisconsin showed early concern for children with disabilities by first establishing residential schools for blind and deaf students (in 1849 and 1852, respectively) and later residen-

tial colonies for those with severe disabilities. At the turn of the 20th century and again during the 1930s, Wisconsin recognized that some children with disabilities could be educated in local schools, but programs were few and far between.

In 1939, the Wisconsin Legislature enacted permissive legislation stating that school districts “may” develop special education programs with state assistance, but they were not required to do so. Some school districts responded, but not all. At the time, children with severe and multiple disabilities were exempt from school attendance so many parents had no choice but to keep their children at home.

Traditionally, public education for children with disabilities was segregated and provided by either

Together, with the parent groups we represented, we persuaded legislators to recognize that the Wisconsin Constitution guaranteed a free public education to all children.

Governor Patrick Lucey signs SB 185 into law on August 1, 1973.
 (Left to right) Representative Gary Johnson; Senator James Devitt; Fred Disch, Beloit parent;
 and Representative Midge Miller. Sue Kendrick (second from right) and Fran Bicknell
 (far right), plus other parents and children, were among the many guests.



Photo credit: Wisconsin Historical Society

the local school district, the Cooperative Educational Service Agency (CESA), or the County Handicapped Children's Education Board (CHCEB). As incentive, the Department of Public Instruction (DPI) reimbursed districts and CESAs 70 percent of their program costs. County funds were the main support of CHCEBs, the most active of which operated day schools. By the early 1970s, however, only half of identified handicapped children were in programs. The needs were great and the time for change had come.

Time for Change

During the late 1960s and early 1970s, we parent leaders found that

our long uphill struggle was being helped by the Civil Rights movement as well as legal and policy-related changes taking place in Wisconsin and elsewhere.

In April 1967, Wisconsin Attorney General Bronson La Follette, in responding to a request from the Wisconsin Association for Retarded Children (ARC), now known as "The Arc," wrote that under Article X, Section 3 of the Wisconsin Constitution, all handicapped children had the right to a free public education. Our spirits were buoyed by this opinion, but, unfortunately, it lacked the force of

law. It would take another six years of activism before permissive legislation would give way to mandatory legislation.

Additionally, two federal lawsuits filed in 1971 played roles in promoting the call for mandatory legislation. In Pennsylvania, the Pennsylvania Association for Retarded Children (PARC) filed a federal class action suit against the Commonwealth of Pennsylvania on behalf of parents whose children were denied public education. PARC claimed that to deny services was a violation of a disabled child's 14th

Permissive legislation in 1939 encouraged the expansion of services for children with disabilities in cities and urban areas, but without mandatory legislation, programs remained scarce across much of rural Wisconsin.



Amendment rights to due process and equal protection under the law. In Wisconsin, Rabbi Herbert Panitch of Glendale sued for the right of his disabled daughter to receive a state-supported residential placement outside of Wisconsin.

Around the same time, parents of children with the newly identified handicapping condition called “learning disabilities” began forming local parent groups, the earliest being organized in Madison, Milwaukee and Rock County.

In Madison, parent leaders of various disability groups came together as members of the Madison Special Education Advisory Committee. In Milwaukee, parent leaders, advocates and school leaders played active roles on the Milwaukee Broadly-Based Task Force

on Exceptional Education. Both groups studied recommendations issued by the national Council for Exceptional Children (CEC) that promoted mandatory legislation.

Members of these groups would later play major roles in the development of mandatory legislation. Because change had to happen more quickly, it became obvious to we parent leaders that legislation, not litigation, would be the more effective strategy.

■ Drafting Mandatory Legislation

In 1971, the Wisconsin Legislature’s Education Committee of the Joint Legislative Council (EC-JLC) began studying the unmet educational needs of children with disabilities. In June 1972, during a hearing, we

parent group leaders in attendance became annoyed and impatient. More piecemeal legislation was on the table, but we were having none of it. We wanted comprehensive, mandatory legislation and we were ready to act.

Concerned about the early direction of proposed legislation, Peg Olsen of Madison called her neighbor, state Rep. Midge Miller, a member of the EC-JLC, to discuss the matter. Miller, a busy legislator agreed to talk while she ran errands. So, Olsen drove Miller to the dry cleaners, the bank, and wherever else she wanted to go. Olsen talked the whole time. Later, as a member of the Education Committee, Miller admitted that the car ride was pivotal in her thinking about the necessity of a mandatory law.

Three months later in October 1972, the Education Committee conducted yet another hearing attended by highly informed parents and concerned professionals. Once again, the committee considered piecemeal legislation, but that ended when Rep. Miller gently asked Sen. Raymond Heinzen, the committee chairman, if it

were possible to scrap all present bills and create one new comprehensive bill. Heinzen replied that it was possible.

Shortly after, Sen. James Devitt of Greenfield moved that the Joint Legislative Council create a special subcommittee to draft model mandatory legislation. In those few stunning seconds, mandatory legislation received a long-awaited green light. We parents in the room fell silent as we pondered how all this could come about. We had spent years studying issues surrounding the education of children with disabilities, and now a new challenge confronted us: getting the right bill written and passed.

Heinzen appointed Devitt to chair the special subcommittee with members Sen. Chilsen and Miller and Rep. Bert Grover (who later

became State Superintendent), and public member Frank Joswick, a former district administrator. But something important was missing. Members of the subcommittee knew little about special education or children with disabilities. So, Devitt and Miller recruited the six authors of this article and two professional special educators, Dr. Kenneth Blessing, the director of the Bureau for Exceptional Children at DPI, and Dr. William Tilley, the director of special education for Madison Public Schools, to serve as their advisers. Within the following week, Devitt appointed Olsen to chair our ad hoc advisory committee, and we were underway.

During October 1972, we worked with Judi Greenberg, an attorney with the Legislative Council, as she prepared an early working draft; but there was much left to be clarified and incorporated, especially model statutory language from CEC.

By early February 1973, the Joint Legislative Council released our comprehensive 55-page draft, Senate Bill 185, to the Senate Health, Education and Welfare Committee. There followed a flurry of news coverage and public presentations. Other

legislators took up the cause as well, one of whom is still in office — Sen. Fred Risser of Madison.

■ Legislative Action

On February 21, 1973, the Assembly and Senate held a well-attended joint public hearing. Some people proudly wore gold sweatshirts reading “SB 185 Saves Kids and \$\$\$.”

No one voiced opposition. Later that day, the committee approved the bill on a 4-0 vote. It seemed like everything was moving smoothly.

Within days, however, opposition surfaced from a handful of legislators and in letters to the editor in various Wisconsin newspapers. These objections reflected the philosophy that children with disabilities should be the responsibility of families, churches, and philanthropic organizations. Opponents felt that mandatory legislation was socialistic, state-driven, and too expensive given the probability that children with disabilities would not return much of value to society.

As soon as opposition surfaced, we developed another strategy. Led by ARC President, Mary Murphy and Executive Director Merlen Kurth, we recruited others

About the Authors

Barbara Pellegrini and her husband moved from Wisconsin to Berrien County, Michigan, in 2009, where they built a lakeside vacation home for their family.

Peg Olsen and her husband still live in Madison and find great joy in welcoming new grandchildren. Peg continues to advocate for adults with disabilities.

Fran Bicknell, until her death on April 24, 2017, lived in Madison and remained active on behalf of adults with autism. She enjoyed sharing her remarkable knowledge of the history of disability rights in Wisconsin.

Elaine Keller still lives in her home on the north side of Milwaukee. She continues to sort and send archival material related to her work on behalf of children with disabilities to the Wisconsin Historical Society.

Donna Mutschler lives in Dodgeville to be close to her family. Her greatest joy is recalling the fight for mandatory legislation in light of the successes of her children and grandchildren.

Suzanne Kendrick lives in a retirement village in Madison. Upon agreeing to co-author this article, she remarked, “Well, it’s about time!”

and organized a system of personal visits to the offices of legislators to explain our position and ask for their votes. We emphasized that our children had a constitutional right to an education in Wisconsin and to depend solely on the goodwill of others reduced our children to being objects of charity instead of recipients of justice. In a few notable instances, we were dismissed as “bleeding hearts,” “do-gooders,” and even “crazy.”

Since the bill included state expenditures, it also needed

How Does Your Insurance Measure Up?

24/7 Injury Triage • Comprehensive Employee Benefits • Cyber Protection


THE Insurance CENTER



To learn more about our services,
contact our knowledgeable team:

customer@ticinsurance.com
800.362.8046



Long-time advocate Fran Bicknell (right) talks with Representative Midge Miller at the signing of SB-185 on Aug. 1, 1973.

approval by the Joint Finance Committee (JFC) before advancing to either house for a vote. In early April, the JFC held a packed, tension-filled hearing. The opposition spoke first, setting a negative tone for the rest of the hearing. One woman testified that the bill could re-create what happened in Germany when Nazi nurses, in the name of the state, took children away from their parents and confined them to institutions. After the hearing, nine of us mothers decided to offset a potential threat and composed a letter to Governor Patrick Lucey articulating our experiences and arguments for mandatory legislation. We concluded with an appeal for his signature should the bill come to his desk.

The JFC ultimately decided to cut reimbursements and eliminate the up-front financial incentives for districts to launch new programs in order to reduce the fiscal note of the bill from \$21 million to \$6.9 million before passing it on a 10-2 vote. Despite the reductions in funding, there were joyful shouts in the halls of the Capitol. We had cleared a major hurdle. On the following day,

the bill was ready for consideration by the full Senate and Assembly.

In late June, the full Senate approved SB 185 on a 28-3 vote. The bill passed the Assembly on July 12 with overwhelming support, 87-8. Out of 132 members in the Wisconsin Legislature, only 11 members voted against mandatory education for children with disabilities (6 did not vote). It was a true bipartisan achievement.

On August 1, 1973, Lucey signed SB 185 into law. It was a glorious, joy-filled summer day. Mothers and their children with disabilities surrounded the governor along with parents, legislators, special education professionals, and the press.

Elaine Keller noted that the process of achieving mandatory legislation had taken exactly one year and one month to achieve. The final 55-page law took effect on August 8, 1973.

■ Implementation and Promulgation

We were not done yet. Immediately, our goal was to spread awareness and speed implementation. Our parent groups began producing informational workshops and circulating guides to implementation and compliance that taught parents to know and exercise their rights. Eventually, our parent groups branched into advocacy with the goal of training those who would train others, including parents, professionals, and elected officials. Most notable were the advocacy training projects prepared by Peg Olsen and Elaine Keller of ARC and Barbara Rock of the Milwaukee Parents Association of Children with Learning Disabilities

On college campuses, education departments could not turn out fully certified special education teachers fast enough for smooth implementation. Consequently, many teachers who entered the field of special

education did so with provisional licensure, resulting in over-diagnoses, confusion, and questionable program delivery.

The Wisconsin Education Association Council (WEAC) became concerned about the burden placed on regular educators as a result of mandatory legislation and created a Special Education Committee. To discourage inappropriate “mainstreaming,” a few WEAC bargaining units proposed class size contract language: one child with a disability in a regular classroom would count as five regular students.

By July 1975, the DPI was speeding up promulgation. DPI had elected to go slow so its administrative rules would align with elements of a similar law, Public Law 94-142, that was nearing final passage in the U.S. Congress that same year. Promulgation, however, was speeded up when Betty Johnson, a parent activist from Beloit threatened a non-compliance lawsuit against the School District of Beloit. It worked. Once the promulgation of the rules was complete, they went into effect on January 1, 1977, thus finally creating Chapter 115 of Wisconsin Statutes.

■ Impact of Chapter 115

At the time, we mothers were so occupied with implementation issues that we did not fully realize the impact our work would have at the state and national levels.

Immediately, the new mandatory law achieved the following changes in Wisconsin:

1. Mandatory legislation replaced permissive legislation. All children between the ages of three and 21 with disabilities were required to receive a free public education, with the local school district being responsible and accountable.
2. All children entering kindergarten were screened for disabilities. Those already in school suspected of disabilities were referred for a multidisciplinary team evaluation followed by

the creation of an individual education plan (IEP) tailored to the child's needs. Further, program placement was to be as near as possible to the child's home and in classes with regular students, when appropriate.

3. Preschool children (ages three to five) with disabilities became eligible for early intervention. This meant that parents and health professionals could consider a local early childhood special education program as an alternative to institutionalization.
4. Parents gained the right to participate in their child's education by approving the multidisciplinary team evaluation, IEP, and program placement. They also gained the right to a legal appeal.
5. The public face of children with disabilities became more visible and accepted. The law shifted focus from labeling a child

based on the cause of disability (e.g., "retardation") to one that emphasized the child's individual or exceptional educational needs. Further, students without disabilities gained a deeper understanding of their disabled peers and created a new milieu of empathy and acceptance. Eventually, that understanding transferred to the workplace, where today it is common to see adults with challenging disabilities gainfully employed in restaurants, supermarkets, and industry settings. Many with less challenging disabilities have gone on to college or entered technical fields where the disabilities of their school years no longer pose an impediment to success.

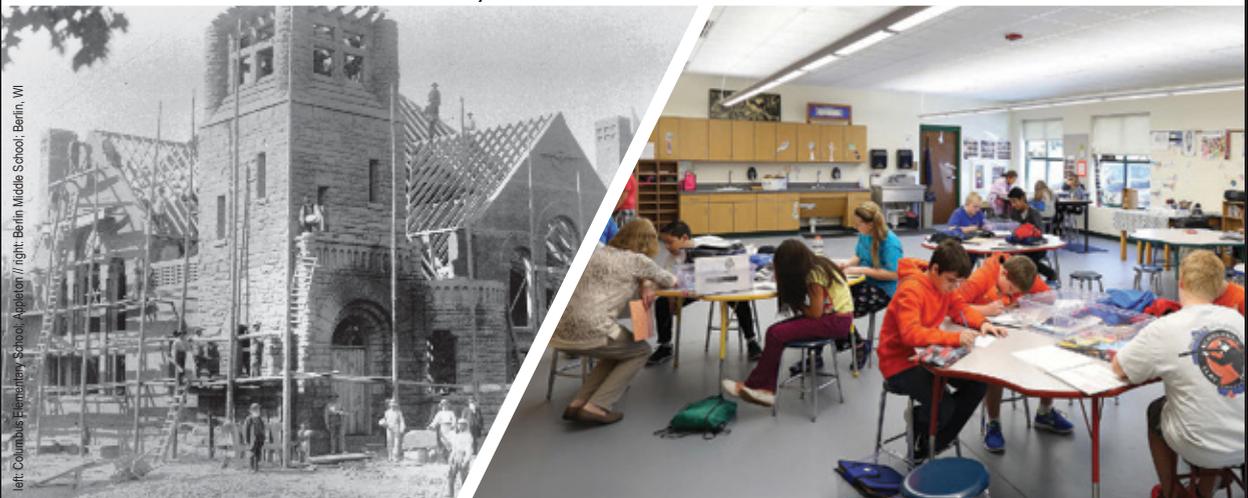
At the national level, probably the most lasting impact of our work was its influence on PL 94-142, known today as the Individuals with Disabilities Education Act. Wisconsin's

Chapter 115 predated the federal law by two years. Many of the concepts and terminology in PL 94-142 are identical to those in our state law. In a similar way, our law influenced the content of the 1975 administrative rules for Section 504 of the 1973 Rehabilitation Act that established education for children with disabilities as a civil rights issue.

It has been 43 years since Lucey signed SB 185 into law, and today children with disabilities in Wisconsin have equal protection to reach their full educational potential. In thinking back, Peg Olsen recalled the words of our late colleague Lila Kelly, as she pressed us forward in the halls of the capitol during our fight for mandatory legislation: "If we don't do anything else in our lives, we have done this." ■

Authors' Note: We dedicate this article to the memory of our friend and co-author, Fran Bicknell, whose knowledge and experience blazed a trail for all of us to follow.

Celebrating 125 years of tradition



left: Columbus Flemish School, Appleton / right: Berlin Middle School, Berlin, WI

master planning // facility assessments // referendum // energy upgrades // solar planning // design // renovation // construction

920.731.2322 // www.hoffman.net

Hoffman
Planning, Design & Construction, Inc.

