Slide 3:
The Constitution of the United States is the supreme law of the land. It provides the general framework for the government of our nation. It establishes the legislative, executive, and judicial branches, and it provides procedures for modifying the Constitution itself. Of particular importance to the education of children with disabilities are the provisions that allow for spending money to provide for the general welfare, and the 14th Amendment. Each state also has a constitution that provides a framework for government of the state.

Slide 4:
There are four major kinds of law:
1. Constitutional law is established in the Constitution.
2. Statutory laws are enacted by the legislative branches of government at the national and state levels.
3. Regulations and guidelines are developed by the administrative agencies, such as departments of Education, to detail the implementation of the statutes. Regulations that are within the authority of the statute have the authority of law, so a violation of a regulation amounts to a violation of the law. Guidelines, however, do not have the same weight as law.
4. Case law is developed by courts. Case law is created when courts interpret Constitutional provisions or statutes as applied to a particular set of facts.

Slide 5:
A hierarchy of authority exists within the legal system. Courts may be called upon to determine whether statutes, regulations, and/or policies are in accordance with law at higher levels of authority. If they are not, changes may be required.

Slide 6:
The problem of race-based segregation in education was taken before the U.S. Supreme Court in mid-century. Brown v. the Board of Education was a case that questioned whether state laws and policies that allowed racial segregation in public schools were in accordance with the provisions of the U.S. Constitution. Let’s take a look at what the 14th amendment says.

Slide 7:
In Brown v. the Board of Education, the United States Supreme Court interpreted this amendment to mean that when a state government establishes a system of public education, a property interest is created and no person can be denied that property without due process of law. By a unanimous vote, the Court decided that race-based segregation violated the equal protection clause of the 14th Amendment.
What did that imply for the education of children with disabilities?

Slide 8:
Although some states had begun to pass laws that would require local education agencies to offer special education services to students with disabilities, many children remained unserved or underserved by the 1960s and early 1970s. Parents questioned whether their children were also being denied their 14th amendment rights. Parents and other advocates for students with disabilities turned to Federal Courts to challenge the status quo. Two landmark cases, PARC and Mills, established that states and local districts have a responsibility to educate individuals with disabilities.
Slide 9:
The provision of appropriate educational opportunity would require additional supports to the states. Congress was required to respond by enacting a series of federal laws that would offer that support. With the Education for All Handicapped Children Act of 1975, federal funding became available to help states provide Free Appropriate Public Education, as required by the courts.

Slide 10:
The decisions of the federal courts in the PARC and Mills cases, combined with the legislative actions of the Congress provided the legal foundations for the education of school age children with disabilities. As a result of these legal actions, children with disabilities gained access to public education programs, parents gained access to children’s educational records, and states were required to provide free, appropriate public education to all children with disabilities.

Slide 11:
In the late 1970s, a child was born in Virginia. Because that baby had Down Syndrome, the child’s parents were offered three choices. The parents chose to keep their child whom they named Sonny.

Slide 12:
Through a private agency, Sonny and his family received a variety of early intervention services during the first months and years of his life. Sonny’s father was pleased with the effects of the programming on his child and family. But he was troubled to realize that not all families had access to early intervention services. He took his concerns to work with him.

Slide 13:
Sonny’s father was Senator Lowell Weicker of Connecticut. He influenced Congress to incorporate into the Education of All Handicapped Children Act a program of grants to the States. The funds would be offered to the states to develop public systems of early intervention services for infants and toddlers with disabilities and their families.

Slide 14:
During the last years of the 20th century, Congress enacted a series of federal laws that protected civil rights and extended educational opportunities for persons with disabilities, including the very youngest children.

Slide 15:
The Individuals with Disabilities Education Act has four parts. Part C of the law is the Program for Infants and Toddlers with Disabilities. In 2004, IDEA was reauthorized and amended. A couple of changes were made to Part C. For example, a new option for the age of transition from Part C services was provided. Under that provision, states may choose to continue to provide a child with early intervention services until he or she has reached kindergarten age. Also, the law expanded the scope of child find and referral by requiring that all children identified as having been involved in substantiated cases of child abuse or neglect, or have been affected by illegal substances or prenatally exposed to drugs must be referred to early intervention services.

Slide 16:
By the end of the 20th century, the United States had made a clear commitment to children with disabilities. The right to an appropriate public education had been established, and a program of federal funding for early intervention services was made available to the states. All states have chosen to participate in the Part C program and have established statewide, comprehensive, coordinated, interagency systems of early intervention services for infants and toddlers with disabilities and their families.
References:


Chapter 3: Legal Foundations of Early Intervention
Lesson 1: The Emerging IDEA

Outcome: Early intervention personnel demonstrate an understanding of the theoretical, historical, philosophical, legal and organizational components that provide the foundation for Part C of the Individuals with Disabilities Education Act (IDEA) and South Carolina's BabyNet early intervention system.

The U.S. Constitution

Provides a general framework for government
Establishes powers of the executive, judicial and legislative branches
Ensures the rights of the governed

Kinds of Law

- Constitutional Law
- Statutory Law
- Regulations and Guidelines
- Case Law

Hierarchy of Regulations

- United States Constitution
  - Federal statutes and regulations
  - State law and regulations
  - Agency policies and procedures

Brown v. Board of Education of Topeka (1954)

Question before the Court:
Does the segregation of children in public schools solely on the basis of race deprive the minority children of the equal protection of the laws guaranteed by the 14th Amendment?

Thurgood Marshall
1908 - 1993
The 14th Amendment to the Constitution of the United States of America

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5.
The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Court Rulings Build a Case for New Legislation

PARC v. Commonwealth of Pennsylvania – 1971
- Provides notification of parents’ rights, child find, evaluations, written educational plans, education in the least restrictive environment, and reevaluation.

- Provides written notice of proposed or refused actions and due process hearing procedures to ensure impartial hearings.

Federal court decisions

PARC, 1971
FERPA, 1974
EAHCA, 1975

Congressional legislative responses

PARC
Section 504
FERPA
EAHCA

Access to education
Benefits for families and children
FAPE

Building Blocks of Legal Foundations

Congressional Responses

1973 – Section 504 of the Rehabilitation Act
- Forbids recipients of federal financial assistance from denying students the benefits of education based solely on disability.

1974 – Family Educational Rights and Privacy Act
- Establishes rights of parents and students over 18 to access all personally identifiable information collected, maintained or used by the school district.

1975 – Education for All Handicapped Children Act
- Provides funds to states to provide FAPE.

You have three choices...

Leave the baby now.
Think about it, and then leave the baby.
Take the baby home.

Sonny

Family received early intervention services through a privately funded agency
Sonny attended preschool along with children who did not have disabilities
Sonny received special education in public school and was “mainstreamed”
Sonny's Dad

- Chair of the Appropriations Subcommittee on Labor, Health and Human Services, and Education
- Initiated the grant program of federal funding to states for early intervention services for infants and toddlers with disabilities and their families.

Key Legislation Protects Rights

- IDEA
- Early Intervention Program for Children with Disabilities
- Fosters a partnership between families and professionals
- IDEA Amendments

2004 Amendments to IDEA

- Public Law 108-446 reauthorized and amended the IDEA in 2004.
- Key changes to Part C –
  - State option for age of transition
  - Early intervention may continue until age 5 or enrollment in kindergarten.
  - Requirement to refer all children
  - Involved in substantiated cases of child abuse or neglect
  - Affected by illegal substance abuse or withdrawal from prenatal drug exposure

National Commitment

- All 50 states chose to operate public systems of education.
- All 50 states chose to accept federal assistance through IDEA to provide equal protection and due process to school children with disabilities.
- All 50 states chose to participate in the federal grant program for infants and toddlers with disabilities funded under Part C of IDEA.