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James G. McCullagh
University of Northern Iowa

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Challenging the Proposed Deregulation of P.L. 94-142: A Case Study of Citizen Advocacy

JAMES G. MCCULLAGH

University of Northern Iowa
Department of Social Work

Public Law 94-142, The Education for All Handicapped Children Act of 1975, considered by many to be the most significant federal legislation for children in need of special education, was proposed for deregulation by the Reagan administration in 1982. This study examines actions taken by citizen advocates—consumer/advocacy/parent (CAP) organizations and groups, parents, and other advocates for exceptional children—who gave testimony in opposition to the proposed changes at public hearings held by the United States Department of Education in late 1982. The most controversial proposed rules were withdrawn on September 29, 1982, while the remaining proposed changes were not implemented. Citizen advocates' overwhelming presence at the hearings and their other activities were instrumental in defeating the administration's efforts at deregulation.

Widely acknowledged as the most significant federal legislation for children in need of special education, P.L. 94-142, the Education for All Handicapped Children Act (1975), signified a continuing commitment to maintain a major federal presence in guaranteeing all children a right to a free appropriate public education (Abeson & Zettel, 1977). Congress noted in the law that of the "more than eight million handicapped children in the United States . . . more than half . . . do not receive appropriate educational services . . . [and] one million of the handicapped children . . . are excluded entirely from the public school system" (Sec. 3). Signed into law by President Ford on November 29, 1975, albeit reluctantly, final regulations were approved in 1977, thus setting the stage for the nation's public schools to open its doors to all children in the fall, 1978.

The proposed rules were published on August 4, 1982 (U.S. Department of Education, 1982b), ending the long awaited and

often delayed regulatory rewrite. The Council on Exceptional Children (1982), for example, fearing that the "public comment period will occur during the summer when the profession as well as parents are away from their communication linkages", urged its membership to send letters to Secretary Bell requesting that hearings be held in the fall, 1982 (p. 1). The many national human service and education organizations with headquarters in or near Washington, D.C. had anticipated the proposed rules and were especially alert and suspicious of the administration's intent. Sensitivity had been heightened when Jack Anderson (1982) had exposed the "bureaucratic bullies of the 'New Federalism' " and had drawn attention to Joe Beard, a lawyer in the Department of Education's Office of the General Counsel, who had devised a strategy to "divide the enemy" and "trick" Congress by submitting proposed rule changes for their consideration over an extended period.

Hamilton and Smith (1982) of the Children's Defense Fund, in a letter to "Friends of Special Education", detailed how the proposed revisions would have an adverse impact on children in need of special education and related services. They indicated that the proposed changes would

restrict parental rights and involvement, including elimination of the current requirement of parental consent for preplacement evaluation and an initial placement; reduced requirements to ensure parental participation at IEP meetings; elimination of parents' right to open due process hearings to the public and to have access to all evidence before a hearing; and authorization for educational agencies to charge parents for a portion of the services a child receives while placed in a residential program.

In addition, the Administration has proposed new restrictions on related services; abolition of the timelines now mandated between determination of eligibility and IEP meeting, and removal of the requirement that schools provide handicapped children with a continuum of placements and services. Other changes include deleting the requirement that a child be placed as close as possible to home; allowing administrators to circumvent the IEP process in making crucial placement decisions in regard to disciplinary matters; and abandoning existing requirements that tests and evaluation materials be validated and administered by properly trained personnel and that evaluation personnel attend the initial IEP meeting (p. 1).

The proposed changes dramatically affected parents and their children with special education needs, but they also impacted school boards, teachers, administrators, related service providers, and numerous organizations who represented parents or professional groups. Who then acted to speak against the proposed rules? The editors of *The Exceptional Parent* (Klein & Schleifer, 1982a) could rightly take pride in their observation that:

The power of individual parents, parent organizations, organizations of disabled people and other individuals and groups who are advocates of people with disabilities has been dramatically evident in the current proposed regulations change process (p. 16).

Purpose

The purpose of this paper is to document the advocacy efforts of CAP organizations and groups, parents, and other citizen advocates who testified on behalf of handicapped children at one of the eleven public hearings held by the United States Department of Education. It was their time to be heard by then Secretary Bell and the Reagan administration. Citizen advocates—CAP organizations, parents, and other concerned advocates—are a relatively new political force in advocating for a strong federal presence in shaping educational policy. This group, mobilized to engage the administration in a specific, time-limited action, dominated the hearings.

This paper does not address the role of organizations representing school boards, related service professionals, provider agencies, educators, administrators, other interested professionals nor representatives of public agencies or elected officials. While a diversity of concerned organizations and agency personnel testified primarily against one or more proposed rules, this paper is a case study of citizen advocacy to prevent the deregulation of P.L. 94-142. It is an illustration of "individual and broader-based efforts by members of the public to effect changes in both the formulation of policies and their implementation" (Hudson, 1982, p. 109).

Federal Role in Special Education

The challenge to the federal role in special education was evident. Advocates for a strong federal presence envisioned a

return to state supremacy and a return to an earlier period when many children were denied or received an inappropriate education. Klien and Schleifer (1982b), in anticipation of the proposed changes, expressed the dominant view voiced at the hearings, when they asked their readers to "argue strongly for continued federal presence in the area of compliance. The Federal government must continue to monitor programs throughout the country and cajole, encourage, or if necessary, require local leaders to obey the laws" (p. 10).

Congress held oversight hearings on August 10, 1982, in the Senate (U.S. Congress. Senate, 1982) and in late September in the House of Representatives (U.S. Congress. House, 1982). The outrage felt by the Congress was best expressed when the House Subcommittee on Select Education "unanimously adopted a resolution disapproving of the full set of proposed regulations" (Hunter, 1982). Though a "lone vote was cast [by one House member apparently] as a favor to the Administration" ("House recall," 1982, p. 388), the message had been sent.

Senator Weicker, Chairman of the Subcommittee on the Handicapped, related the "success story almost without parallel in history" (U.S. Congress. Senate, 1982, p. 1) regarding what the Act had accomplished for the formerly excluded, ignored, and inadequately educated handicapped children. Senator Weicker, however, in his opening statement on oversight of the proposed regulatory changes, noted that "the only proposals we have seen from this administration have sought to gut special education" (p. 1). Senator Weicker recounted the administration's efforts to "decimate the law [P.L. 94-142] and to slash funding" and then questioned if the proposed changes were the administration's attempt to "eliminate our Nation's system of special education" (p. 2).

Some were concerned about excessive paperwork, an intrusive federal role in an area previously reserved for the states and local communities, ambiguity of definition of terms, and increased involvement of schools in areas they believed were better left to community agencies. They saw an opportunity to shape a return to more state and local control. The stage was set for a dramatic confrontation which could shape the direction of special education for decades to come.

The Department of Education's Office of Special Education (1981), consistent with President Reagan's January, 1981, Executive Order 12291, in a briefing paper, proposed that four general areas—definitions, grants administration, services, procedural safeguards—comprising "16 sets of regulatory sections" (p. 1) become "targets of opportunity for deregulation" (p. 1). Subsequently, the Department (1982b), in its notice of proposed rulemaking, stressed then Secretary Bell's belief that the proposed changes

will result in regulatory requirements which will adhere more closely to the language of the statute and its legislative history. The proposed regulations are designed: (1) To reduce fiscal and administrative burdens on recipients . . . , and (2) to address various problems that have arisen in the implementation of the program (p. 33836).

To juxtapose, one witness, after paraphrasing the above mentioned statements, then went on to comment:

Many parents, educators and advocates would ask at this point, and I quote, "Where do the needs of the child fit into the reasons for the proposed regulations?" Or, perhaps the question should be, "Are the proposed regulations addressing the children's needs, or those of the system?"

The Department's (1982c) position on deregulation, a dominant theme that permeated the conflict which was voiced in testimony at the hearings, was expressed by Shirley Jones, Special Education Programs. At the public hearing held in New York at the World Trade Center on September 15, 1982, she stated that the Department's definition of deregulation is the "act of identifying highly prescriptive regulatory provisions, reducing such burdens by eliminating or modifying those provisions and whenever possible placing authority and responsibility at the state or local level" (p. 8).

Review of Related Literature

Advocacy as a strategy to stand up for another was established as an active component of the arsenal of professional, citizen, and provider organizations. Numerous books and pamphlets directed to citizen advocates had been written by 1982

and detailed rights and advocacy strategies (e.g., Biklen, 1974; Bowe & Williams, 1979; Children's Defense Fund, 1978, 1979; Des Jardins, 1980a, 1980b; Fernandez, 1980; Turnbull & Turnbull, 1978; Weintraub, Abeson, Ballard, & LaVor, 1976). Parents and professionals were well prepared when they came together to advocate on behalf of children in need of special education and related services.

Methods and Procedures

The Department of Education held public hearings in Washington, D.C. and ten regional sites to obtain public comment to the proposed changes. The Department received over 30,000 written comments, including letters, petitions, and postcards. The data source for this analysis was the written testimony of the 1,426 witnesses. The testimony, on file with the Department of Education, is a loose-leaf, bound multivolume set for each public hearing.¹ The site, dates, and number who testified in 1982 follows: Washington, D.C., September 8–9, 114; Portland, Maine, September 13–14, 161; Chicago, September 13–14, 163; Atlanta, September 15–16, 117; New York, September 15–16, 118; Denver, September 20–21, 109; Los Angeles, September 20–21, 151; Seattle, September 22–23, 144; Dallas, September 22–23, 139; Philadelphia, October 4–6, 127; and Kansas City, Kansas, October 5–6, 83.

Categorization of the 1,426 witnesses was difficult. Each witness' testimony was coded by gender, parental status, and special education classification of children (if applicable) and type of representation (e.g., organization, profession, parent). Witnesses who identified themselves as leaders in CAP organizations were coded without regard to professional (e.g., attorney) or employment status. Instead they were coded as follows: (1) by scope of the organization—international, national, regional, state, local; (2) by highest leadership position when representing two or more organizations at the same level (e.g., two national organizations); and, when necessary, the organization related to the type of child's disability. Finally, witnesses' general position on the proposed changes were coded. Many who testified were parents of special education children, while also holding leadership positions in one or more advocacy, profes-

sional, and provider organizations or public agencies. They were coded by organizational status. The information provided by the witnesses is not always complete. For example, many did not indicate parental status nor type of children in their care.

Findings

Witness Categories

The largest category of witnesses were those from organizations and groups that primarily represented children and adults with various types of disabilities (36.5%). The next largest group consisted of parents, including some who were lay advocates (17%). Adults and children with disabilities, relatives of individuals with disabilities, and concerned citizens represented almost 3%. School representation included state departments of education (2.0%), school boards and associations (2.1%), teachers (2.6%), teacher associations and unions (2.5%), school administrators (4.3%) and associations (1.4%), related service professionals (2.7%) and associations (6.5%), and other associations (1.7%). Provider agencies and associations (4.9%), elected officials (1.6%), university students (0.4%), and attorneys (2.2%) also testified. Representatives from various state and local councils and offices (e.g., Office of the Handicapped, Protection and Advocacy, Developmental Disabilities, P.L. 94-142 Advisory Panel) accounted for 6.5%. Others who could not be identified or classified into one of the above categories represented 2.2% of those who testified.

Testimony

While almost all citizen advocates opposed the proposed rules, testimony varied. Some advocates addressed each proposed change. Others addressed major points of contention. Still others related personal horror experiences and the experiences of others they knew as they detailed the need for services, the lack of services, difficulties with school personnel, and fear of loss of needed educational programs and necessary related services. Some shared positive experiences while expressing anger, hurt, fear, and shock regarding impending loss. Often, the testimony was intensely personal. In addition, many witnesses

spoke not only on behalf of their organization or organizations but also as parents or relatives of exceptional children.

Certain themes or issues emerged during testimony which underscored the objections of most. These witnesses testified to the paramount importance of the federal government as a standard setting body and watchdog. The question of trust—or really lack of trust—of the Reagan administration was raised continually. Regardless of the type of testimony almost all expressed opposition: “I urge you to leave Public Law 94-142 alone”; “We are opposed to the proposed regulations to PL 94-142 in their entirety. We find them totally unacceptable and believe they should be withdrawn completely”.

Specific regulatory proposed changes most addressed by citizen advocates pertained to due process including prior notice and parental consent thereby weakening parent involvement, timelines and procedures for the development of an individualized educational plan (IEP), opportunity for children to be placed in the least restrictive and most appropriate placement, and accessibility to needed related services provided by qualified professionals. The right of children to a free appropriate education with opportunity to become a meaningful and productive member of society was echoed in many forms. The specific objections to the proposed rules were numerous and cannot be recounted here except to briefly touch on major issues. As one witness testified

Even if the time frame permitted an itemized examination of the proposed amendments, I would consider that inappropriate. Because to belabor the specifics is a little like complaining about plugged up salt shakers on the Titanic.

Role of Federal Government. A national law applicable to all children in all states with its provisions safeguarded by the federal government underlie the concerns of many witnesses. Some, for example, gave specific expression to the importance of a federal presence:

Stability, reliability, is a scarce commodity to families of retarded and developmentally disabled citizens. The assumption of a positive leadership role by our national government brought new and immeasurable hope and promise of stability to our frightening and uncertain world.

We parents look to the federal government, through its laws and regulations, to protect these children and to provide the statutory and regulatory framework with which state and local school districts and agencies must comply in order to carry out their responsibilities to these young citizens.

Loosening federal requirements, rather than spurring states to set and/or maintain their own specific standards, will instead result in a wholesale move to weaken the requirements of state laws for full educational services for handicapped students.

The Reagan Administration is dedicated to ending the federal government's involvement in protecting the rights of the handicapped.

Parent participation. Witnesses questioned the absence of consumer involvement in the proposed changes. One contrasted the proposed changes with the earlier 1977 implementing regulations. Another, for example, asked for meaningful representation of many groups to start all over again.

The 1977 regulations also boasted of the massive involvement of community groups, parents associations and professionals in writing the regulations. The 1982 proposed regulations are strangely silent about consumer and community involvement in their preparation.

I beg you to burn this document and start anew with a council of knowledgeable representatives chosen by members of the following groups. . . .

Welfare Dependency. The possibility of inadequate or no educational programming coupled with the awareness of what the lack of educational opportunity was like prior to 1975 made parents and advocates painfully aware of the possible dependence of children and later youth and adults on family, welfare and institutions. Parents stated:

I didn't ask for this job. I was given it. And all I want out of anything is for my son to be a functioning member of society, not in a welfare line waiting for a handout.

What's it going to cost to institutionalize my son when I'm not around to take care of him anymore because he didn't have an education, and education that he is entitled to now?

Fear, Frustration, Fight. Parents clearly expressed their anger, fear, and frustration with the "system" and they also clearly in-

licated their willingness to fight. They believed they had little to lose by standing up to the Reagan administration, and everything—their child's right to an education—to gain. And they did express themselves:

It's my entire life that's on the line, and I'm a little nervous. I'm the parent of a multiply-handicapped son.

We have no where else to go and no more important cause than to fight the administration each step of the way.

I'm scared. You back me into a corner, and the only thing I know to do is try to fight my way out, and that's what I feel now.

CAP Organizations

Many national organizations with state and local affiliates, state organizations, local groups, and coalition groups came together to defeat the proposed rules. CAP representation, constituting the largest category of witnesses, was a major force at the 11 public hearings. Table 1 lists organizations or groups by disability. Advocacy, parent, and some groups in the "other" category were not specific to a particular disability. Some organizations who had representatives at the hearings are listed in Appendix 1.

One CAP organization, for example, the Association for Retarded Citizens (ARC), was represented by at least 9% of those who gave testimony. ARC's *Action Alert* (1982) called for a "massive response from ARC'ers . . . to secure changes in the rules" (p. 1). In addition to the need for generating "thousands and more thousands of written comments" (p. 1), ARC stressed the importance of a "huge turnout" (p. 2) at each hearing. ARC's plea continued:

Please make every attempt to attend the hearings. We hope that so many individuals and organizations will seek to testify that there will not be enough time to hear all witnesses. In that case, media attention will be enhanced and an excellent opportunity for good publicity against the proposed rules will become available. Each should plan to bring busloads to the regional hearing nearest you. (p. 2)

The *Action Alert* also included an "initial analysis" of the proposed changes. The *Alert* informed and educated and then called

Table 1

Representation of Advocacy Groups by Disability

Disability	Number of Groups					
	Local*	State	National #	Total	Female	Male
Mental Retardation	74	52	9	135	86	49
Learning disabilities	18	35	7	60	50	10
Autism	13	15	5	33	26	7
Disabilities	15	13	4	32	16	16
Cerebral Palsy	12	12	4	28	19	9
Persons with Handicaps	7	16	4	27	20	7
Blind/Visual Impairment	10	7	7	24	15	9
Deaf/Hearing Impairment	11	7	5	23	13	10
Spina Bifida	2	2	7	11	4	7
Mental Health	4	5	1	10	9	1
Physical Handicaps	2	5	0	7	5	2
Severe Handicaps	1	1	4	6	5	1
Parent groups	92	13	0	105	84	21
Advocacy	5	5	1	11	10	1
Other	2	4	2	8	7	1
Total	268	192	60	520	369	151

*Includes members.

#Includes regional and international representatives.

on its leaders and members to act. The ARCs activities have been described in detail to illustrate how effective one national organization with state and local chapters consisting of thousands of members can be in opposing changes that are detrimental to its membership. Similarly, numerous other organizations were sending memoranda, alerts, and letters to its membership with calls for action.

Parent Groups and Coalitions. The diversity of parent groups, coalitions, and combined parent and professional organizations, councils, and groups that spoke against the proposed changes included state and local coalitions, parent-teacher groups, local advisory councils, parent support groups, parent advocacy groups, task forces on special education groups, and school parent groups. These groups included the Oregon Coalition to Save Special Education, "a group of parents, educators, professionals, consumers and advocates committed to maintaining without re-

vision the current Public Law 94-142 regulations"; Philadelphia Coalition for Equality Special Education, "counsel of a number of advocacy groups"; Washington State Special Education Coalition, "representatives of 31 organizations, parents and professionals, who share a common concern about the quality of education for handicapped students"; Promise, ""a statewide coalition of organizations and individuals concerned with special education in Virginia"; Caddo Parish Special Education Advisory Council, mandated by state law in Louisiana; Mt. Diablo Unified School District's Community Advisory Committee for Special Education, "a state mandated group of parents . . . designated under California's Master Plan"; and, Parents Advocating for the Handicapped (PATH), "a newly-formed group in . . . Tennessee. . . [because] there have been many children receiving inappropriate, inadequate programs and some receiving no programs at all."

Parents

At least 41% of those who testified were parents of children with handicaps. Only 4% stated they were not parents. The remainder did not indicate parental status. Just 466 of the 583 who stated they were parents indicated their child's specific handicap. Some had two or more children with handicaps. Most were children with mental retardation (33%), followed by children with learning disabilities (19%), multiple handicaps (8%), autism (8%), hearing impairments (6%), cerebral palsy (6%), severe handicaps (5%), visual handicaps (4%), deafness/blindness (4%), and physical disabilities (4%).

Parents who did not represent any organization comprised 17% of those who testified. Almost all were biological parents, while a few were foster, adoptive, or surrogate parents. Some parents also identified themselves as lay advocates. Most were female (80%). Almost all parents indicated opposition to the proposed changes, while most insisted on complete withdrawal of the proposed rules. A few selected statements from parents' testimony may suggest the strength and intensity of feeling and expression: "It is near-criminal if any changes occur in P.L. 94-142"; "Do not regulate or loosen the reins, but, rather, strengthen these laws. Implement these laws".

Concerned Citizens

Adults and children with disabilities (27), relatives of individuals with disabilities (8), concerned citizens (7), and university students (7) also testified. At least 45 witnesses identified themselves as having disabilities, but most were classified under other categories. Some excerpts from relatives may reflect the concern expressed at these hearings. A grandmother stated: "I don't think that Washington always knows what the average human being has to go through. At the local level, we're going to have school districts that's not going to do nothing." A sister who has two brothers with handicaps commented: "I wish that all school districts would obey the law, but even I know they don't. And unless it's written down what they have to do they won't do it." A 12-year-old boy whose brother has mental retardation spoke against changes in related services because of his fear that the speech services which his brother "needs on a daily basis" would be limited. The potential pain resulting from the imminent loss of necessary education and related services was evident as relatives and others cited example after example of the present and future gains for children brought about by the law and current regulations.

Discussion

CAP organizations as well as related service professional associations, state departments of education and a variety of state councils, and school boards and associations were informed of the impending changes. They alerted and then mobilized leadership at the state and local levels, while reaching out to its membership and consumers of special education and related services. Mobilization was dramatic. Many perhaps became involved for the first time. For others the fight was a continuing struggle which had begun with their entry into advocacy efforts because essential educational opportunities had not been available for their children. This brief mobilization of thousands, led by national and state organizations, reaffirmed the right to appropriate education for those children who had been denied such an education or served inadequately by local and state public education programs.

The message to save P.L. 94-142 was not only directed at the

Department of Education but also aimed at the Congress, the President, and state officials. CAP organizations—from the national to the local, from the newly formed to the long-standing, from those with memberships of dozens to those of thousands, from those with no budget nor membership dues to groups with large budgets and many staff—rallied to defeat the proposed changes. These organizations represented untold numbers of exceptional children and adults. The actual number of persons directly and indirectly involved, including those who signed petitions, may never be known. This issue may have mobilized more parents and CAP organizations than any other issue in the field of special education.

The most controversial proposed rules were withdrawn on September 29, 1982, by the Education Secretary Terrell Bell (U.S. Department of Education, 1982a); the remaining proposals died a quiet death in the Department of Education ("ED abandons," 1982). Secretary Bell acknowledged the outpouring of protest by parents and especially mothers who acted by writing letters, gathering signatures on petitions, and testifying at the scheduled public hearings. The Director and Assistant to the Director of Special Education Programs, Department of Education (Sontag & Button, 1982) noted that the "written comments and the information presented at the public hearing . . . represented nearly unanimous disapproval of several positions proposed by the Department" (p. 13) which led to Secretary Bell's decision.

Parents and children had much to lose—a free, appropriate public education and necessary related services. Professionals who provide related services could have been stricken from the new regulations while services could have been drastically reduced. Jobs for many in the field of education could have been eliminated. The federal government's role, and particularly the Congressional role, in education would have been curtailed. If the Reagan administration had been successful in this effort, other initiatives to reduce the federal presence and increase state responsibility would have been forthcoming. It was a test of political power. The intent to divide and conquer the enemy, espoused by Joe Beard, a departmental attorney, did not succeed.

Local, state and national CAP organizations and coalitions, many organized by disability, represented groups who had been

denied adequate public education prior to the historic passage of P.L. 94-142. The CAP groups of the 1970s and 1980s have learned that

politics affects in one way or another almost everything that happens to exceptional children, that individually or together people can affect political events, and that unless more people become involved it may be doubtful that the goals of educating all exceptional children will be achieved (LaVor, 1976, p. 259).

Perhaps this case study of citizen advocacy—CAP organizations, parents, and friends of the handicapped—has demonstrated Hudson's (1982) belief "that the greater the volume and intensity of citizen advocacy, the greater the likelihood that positive program outcomes will follow" (p. 120). Citizen advocates were ready; they were involved, voiced strong opposition, and they made a difference. The educational rights and resources so desperately needed by so many exceptional children had been saved by an outpouring of protest against cutting back services to this special and vulnerable constituency.

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Footnote

1. Copies of the testimony presented at the 11 public hearings are available from the Department of Education, Office of Special Education Programs, Room 3086, Switzer Building, 300 "C" Street, SW, Washington, D.C., 20202.

Appendix

List of Selected Organizations Represented at the Public Hearings

Alexander Graham Bell Association for the Deaf
American Coalition of Citizens with Disabilities
American Foundation for the Blind
Arthritis Foundation
Association for Children and Adults with Learning Disabilities
Association for Retarded Citizens
Association for the Blind and Visually Impaired
Association for the Rights of Children with Handicaps
Association for the Severely Handicapped
Coordinating Council for Handicapped Children
Cornelia de Lange Syndrome Foundation
Council for Children with Mental Disorders
Down's Syndrome Congress
Epilepsy Foundation of America
International Association of Parents of the Deaf
International Institute for Learning Disabilities
National Alliance for the Mentally Ill
National Association for Down's Syndrome
National Association for the Parents of the Visually Impaired
National Association of the Deaf
National Easter Seal Society
National Federation of the Blind
National Network of Learning Disabled Adults
National Society for Autistic Children
National Society for Children and Adults with Autism
National Society for the Deaf
Spina Bifida Association of America
United Cerebral Palsy Associations
Women with Disabilities United

