

HCJ 2599/00

1. **Yated – Non-Profit Organization for Parents of Children with Down Syndrome**
 2. **54 Parents (Anonymous)**
- v.
1. **The Ministry of Education**
 2. **The Minister of Education**

The Supreme Court Sitting as the High Court of Justice

[August 14, 2002]

Before Justices T. Or, D. Dorner, E. Levi

Petition for an *order nisi*. Petition accepted.

Facts: The Special Education Law, 1998, provides that the State must provide special education, as per the definition of that term in the statute. Petitioners are the parents of children with special needs who are integrated into the regular educational system. They claim that that State does not provide financial aid to aid them with the expense of educating their children. Petitioners assert that this infringes their children's fundamental rights, discriminates against them, and violates the provisions of the Special Education law.

Held: The Court held that the right to education is a fundamental right. This right is recognized by sources of Jewish law, the law of the State of Israel, international law, and the laws of foreign countries. The Court interpreted the provisions of the Special Education Law, 1998, in light of this fundamental right. It held that the State had an obligation to provide special education, free of

charge, to those children with special needs who have been integrated into the regular educational system.

Basic Laws Cited:

Basic Law: Human Dignity and Liberty

Statutes Cited:

Special Education Law, 1998

Compulsory Education Law, 1949

Rights of the Student Law, 2000

Equal Rights for People With Disabilities Law

Special Education Law (Amendment No.6), 2002

Treaties Cited:

The International Covenant on Economic, Social and Cultural Rights of 1966

Convention on the Rights of the Child, 1989

Israeli Supreme Court Cases Cited:

[1] HCJ 7715, 1554/95 *Shoharie Gilat v. The Minister of Education and Culture*, IsrSC 50(3) 2

[2] HCJ 4541/94, *Miller v. Minister of Defense*, IsrSC 49(4) 94

[3] HCJ 7081/93, *Botzer v. Municipal Council of Maccabim-Reut*, IsrSC 50(1) 19

[4] FH 10/69, *Boronovsky v. The Chief Rabbis of Israel*, IsrSC 25(1) 7

[5] HCJ 153/87, *Shakdiel v. The Minister for Religious Affairs*, IsrSC 42(2) 221

[6] HCJ 953/87, 1/88, *Poraz v. Mayor of Tel-Aviv/Jaffa*, IsrSC 42(2) 309

[7] CrimA 131/67 *Kamier v. The State of Israel*, IsrSC 22(2) 85

[8] CA 522/70, *Alkotov v. Shaheen*, IsrSC 25(2) 77

[9] CrimA 3112/94, *Abu Chassan v. The State of Israel*, IsrSC 53(1) 422

- [10] H CJ 1113/99 *Adallah – The Legal Center for the Rights of the Arab Minority in Israel v. The Minister for Religious Affairs*, IsrSC 54(2) 164
- [11] H CJ 507/81 *Abu Hatzeira v. The Attorney-General*, IsrSC 35(4) 561

Foreign Constitutions Cited:

- [12] Constitution of Belgium
- [13] Constitution of South Africa
- [14] Constitution of Spain
- [15] Constitution of Ireland

United States Cases Cited:

- [16] *Oberti v. Board of Educ.*, 995 F.2d 1204 (2d Cir. 1993)
- [17] *Daniel RR v. State Bd. Of Educ.*, 874 F.2d 1036 (5th Cir. 1989)

Israeli Articles Cited:

- [18] Gershon Gontovnik, *The Constitutional Law: Direction of Development after the Constitutional Revolution*, 22 *Iyunie Mishpat* 129 (1999)

Jewish Law Sources Cited:

- [19] Maimonides, *Laws of Torah Study*, Ch. 1,2
- [20] Babylonian Talmud, Tractate Nedarim 81b

For petitioners—Omri Kabiri, Ori Kaidar

For respondents— Dana Briskman, Office of the State Attorney

JUDGMENT

Justice D. Dorner

This petition raises the following questions: Are children with special needs only entitled to free special education in a special education

institution? Or is the State also under an obligation to provide free special education to children with special needs who have been integrated into the regular education system?

The Statutory Provisions

1. Section 4 of the Special Education Law, 1988 provides that “[t]he State is responsible to provide special education under this law.” Sections 3 and 7 of the statute regulate the placement of children with special needs in educational institutions. Pursuant to section 3 of the law:

A child with special needs is entitled to free special education in a special education institution in his area of residence. Where an institution is not located in the child’s area of residence, the local education authority must provide such special education, in a suitable institution, as close as possible to the child’s area of residence, even if this institution is located within the jurisdiction of another municipal authority.

Section 7 of the law further provides:

- (a) The Placement Committee shall determine the eligibility of a child with special needs for special education and his placement in a special education institution.
- (b) In determining the placement of a child with special needs, the Placement Committee shall prefer placement in a recognized educational institution which is not a special education institution.
- (c) Where the Placement Committee has decided on the placement of a child with special needs in an institution as stated in subsection (b), the Committee shall recommend the

treatment or special lessons that shall be given in that institution.

Section 1(a) of the law defines the terms “special education,” “special education institution,” and “recognized educational institution” in the following manner:

“special education” – systematic instruction, teaching and treatment given under this law to a child with special needs, including physiotherapy, speech therapy, occupational therapy, and treatments as per other professional disciplines that shall be determined, all in accordance with the needs of the child with special needs;

“special education institution” – a recognized educational institution in which special education is provided, including a class in a recognized educational institution in which special education is provided;

“recognized educational institution” – as defined in the Compulsory Education Law, 1949.

Facts, Procedure, and Claims

2. Yated, a registered non-profit organization, together with 54 parents of children with Downs syndrome, asks that we order the State to provide free special education to children who, though having special educational needs, have been found suitable for integration in regular educational institutions. Petitioners claim that the authorities are required by the Special Education Law to finance special education in any educational institution where a child is placed. They claim that the approach expressed in section 7(b) of the law requires the Placement Committee to prefer the placement of children with special needs in a

regular educational institution. Furthermore, pursuant to the policy of the Ministry of Education, children with special needs should, wherever possible, be placed in the regular educational system and also be given additional educational assistance. Petitioners explained that the Ministry of Education, though it encourages such integration, does not provide financial aid. As such, the financial burden falls on the parents. As such, parents who are unable to bear these expenses are forced to transfer their children to special education institutions, despite the fact that these children have been found suitable for integration into the regular educational system.

Petitioners referred us to the State Comptroller's Report. This report examined the special education framework for 2001 and concluded that the budgetary framework, as set forth above, was inadequate. Report No. 52B of the State Comptroller (2001) noted that the Ministry of Education's interpretation of the law was that there was no entitlement to receive free special education within the regular education framework. The Report noted that this interpretation found expression in the Ministry's guidelines and in the allocation of resources. Special education institutions received monies as per the services to which their pupils were entitled. In contrast, the budgetary allocation for the integration programs did not suffice to meet the needs of the integrated pupils. The Report also stated that, in recent years, the number of hours allocated by the Ministry of Education has been inadequate to meet the needs of the integrated students. Moreover, a large majority of the monies of the Special Education Department is directed to special education frameworks; only a small part thereof is directed to integration. The Report concluded by stating that the limited resources allocated to the integration program do not meet the needs of the children in the program. Under these circumstances, the economic and psychological burden of integration falls on the children's parents, who are forced to finance the services independently. Since most families lack such resources, the integration options for many children are limited.

This was the background for petitioners' claim that the policy of the Ministry of Education violates the right to education – a fundamental right. They further alleged that this policy infringes the fundamental right to equality. This is because it discriminates between parents whose children's special education needs are paid by the Ministry of Education and between parents who are forced to bear these costs independently. Furthermore, they claim, the policy also discriminates between those children integrated into regular classes – as their parents can bear the expenses involved – and those children placed in special education institution solely due to their parents' inability to bear those expenses.

3. In its response, the State did not dispute the pedagogical advantages of integrating children with special needs into regular educational institutions, and that the policy of the Ministry of Education was to encourage such integration. As part of this policy, since 1996 the Ministry of Education has even implemented programs for children with special needs who have been integrated into the regular education system. The Minister of Education appointed a public committee in 2000, which noted the importance of giving preference to integration within the regular education system, as provided by the Special Education Law. The Committee also noted the inadequacy of the resources allocated towards such integration. Internal ministerial committees were appointed to implement the recommendations of the public committee. These determined that the regular education system should be granted monies for additional integration hours and personnel trained in special education. They further determined that those special education students studying within the regular education system should receive the services provided by the law, as available resources allow.

The State claims that, subject to budgetary pressures, significant resources are allocated towards integration. Even so, the State contended that the clear import of section 3 of the law is that the right to free special education, which is conferred by section 4 of the law, can only be

realized in an institution for special education or in a special education class within a regular institution. The actual extent of assistance granted to children with special needs in the regular education system is subject to the discretion of the Placement committee. The State claimed, however, that the Placement Committee is not authorized to provide assistance for all “special education,” as per the broad definition of that term in the law. They further argued that, pursuant to section 7(b) of the law, the State is under no statutory obligation to provide such assistance. This is because the decisions of the Placement Committee are only recommendations; their realization is contingent upon the resources actually available to the State.

The Right to Education

4. The right to education has long been recognized as a basic human right. The right is anchored in the Universal Declaration of Human Rights of 1948. Article 26 of this Declaration provides that every person has the right to education and that education must be free, at least in the elementary and fundamental stages. The International Covenant on Economic, Social and Cultural Rights of 1966 was also ratified by Israel in 1991. This declared in article 13 that education should be directed to the full development of the human personality, and that it should strengthen the respect for human rights and fundamental freedoms. It also determined that elementary education should be compulsory and freely available. See XXXI Treaties of Israel 1037, at 205. The right to education is also anchored in articles 28 and 29 of the Convention on the Rights of the Child, 1989. See XXXI Treaties of Israel 1038, at 221.

The right to education is also anchored in numerous constitutions, such as the Belgian Constitution (article 24) [12], the South African Constitution (article 29) [13], the Constitution of Spain (article 27) [14], and the Irish Constitution (article 42) [15]. The German Constitution and

the constitutions of most of the states of the United States establish the government's responsibility to provide education for its citizens.

5. In Judaism the right to education and the obligation to educate are fundamental, and are deeply rooted in Judaic sources. The traditions of scholarship and diligence which have characterized Judaism for thousands of years are firmly grounded in a variety of obligations under Jewish law. Education and study were seen as being of equal value to all other religious commandments combined. The best students were directed into education and teaching, and the teachers were mandated to facilitate equal education for all, so as to avoid discrimination against the poor. *See* Maimonides, *Laws of Torah Study*, Ch.1 [19]. In this context the Babylonian Talmud states: “[b]e heedful of [do not neglect] the children of the poor, for from them the Torah goes forth.” *See* Babylonian Talmud, Tractate Nedarim 81b [20].

The obligation of education was not only imposed on individuals. It was the responsibility of the entire community. The community was responsible for ensuring the education of all children whose parents could not take care of them. The community had to provide this critical service and make it equally available to all persons. It was the community that bore the burden of the consequences of the failure to provide education. This was Maimonides' ruling on the matter:

In every country, district and town we should arrange for study classes for the children. A city which does not have schools for its children is excommunicated until arrangements for classes are made.

See Maimonides, *Laws of Torah Study*, Ch. 2 [19].

6. Shortly after its establishment, with the enactment of the Compulsory Education Law, 1949, the State of Israel delineated the

scope of its obligation to ensure the rights of its citizenry to education. This law sets out an arrangement for compulsory education for every boy and girl until the age of 15, as well as the State's responsibility to ensure the provision of such education. More recently, the right of children to education in Israel was anchored in the Rights of the Student Law, 2000. The purpose of this law is to determine the principles for the rights of the student in the spirit of human dignity and the principles of the United Nations Convention on the Rights of the Child.

Case law, too, recognized the right to education as a fundamental right. Justice Theodor Or made the following comments regarding the importance of this right:

One cannot exaggerate the importance of education as a social tool. This is one of the most important functions fulfilled by the government and the State. Education is critical for the survival of a dynamic and free democratic society. It constitutes a necessary foundation for every individual's self-fulfillment. It is essential for the success and flourishing of every individual. It is crucial to the survival of society, in which people improve their individual well-being and thus contribute to the well-being of the entire community.

H CJ 7715, 1554/95 *Shoharei Gilat v. Minister of Education and Culture*, at 24 [1].

The right to free education is also an expression of the principle of equality. It enables every child to realize their innate talent and potential, to integrate into society and to progress therein, irrespective of their parents' socio-economic status.

Even so, to date, the question whether the right to education is included in the right to human dignity, as defined in sections 2 and 4 of

the Basic Law: Human Dignity and Liberty, has yet to be definitively resolved. Indeed, Justice Or contended that the right to education was not included in the right to human dignity. See H CJ *Shoharei Gilat*, [1] at 26. But this was a solitary view, and the other two justices preferred to leave the question open. *Id.* at 34.

Discrimination in the exercise of the right to education, if occasioned on the basis of group affiliation, may indeed be regarded as degradation that violates the right to human dignity. Compare H CJ 4541/94 *Miller v. Minister of Defense*, [2] at 131-32. By contrast, unequal treatment occasioned by political, administrative, or budgetary reasons is not degrading, and does not, therefore, violate human dignity. For our purposes, discrimination against children with special needs, though rooted in their group affiliation, is motivated by budgetary considerations. As such, the question of whether such discrimination violates human dignity is not unequivocal and I see no need to answer it. Petitioners did not claim that the law should be annulled because it violates the right to human dignity. Their claim was rather that the law should be interpreted and applied in light of the right to education. Indeed, the basic right to education, as established by statute, our case law, and international law, is of independent validity, and has no necessary connection to the right to human dignity prescribed by the Basic Law: Human Dignity and Liberty. See Gershon Gontovnik, *The Constitutional Law: Direction of Development after the Constitutional Revolution*, 22 *Iyunei Mishpat* 129, 132-47 (1999) [18].

The Right to Special Education

7. The right to special education is a derivative of the right to education. Children with special needs are not able to exercise their right to education unless they receive special education that addresses their

needs. Accordingly, the signatory States to the Convention on the Rights of the Child recognized the right of children who are physically or mentally disabled to enjoy full and decent lives in conditions that ensure dignity, promote self-reliance and facilitate their active participation in communal life. *See* section 23 of the Convention. In order to ensure the protection of these rights, the Convention provides:

Party States recognize the right of the disabled child to special care. Party States shall encourage and ensure the extension, subject to available resources, to the suitable child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Children with special needs are entitled to an education suitable for their needs; this right is recognized in most of the countries around the world. For example, in the United States, the Individuals with Disabilities Education Act, 20 USCS § 1400 *et seq.* provides:

The purposes of this title are:

(1) (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

Many States have also recognized the importance of integrating people with special needs generally and children in particular into regular frameworks, and have created statutory arrangements for such integration. Thus, the Disabilities Education Act provides, in section 1412(a), that preference shall be given to placing children with special needs in the regular education system:

5. LEAST RESTRICTIVE ENVIRONMENT -

(A) [States must establish procedures to ensure] to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

See also Oberti v. Board of Education, 1204 F. Supp. 995 (2d Cir. 1993) [16]; *Daniel R.R. v. State Board of Education*, 874 F. Supp. 2d 1036, 1049 (5th Cir.1989) [17].

In a similar vein, section 6(a)(2) of the Equal Rights For People With Disabilities Law of 1998 provides that “the exercise of right and the grant of services to a person with disabilities shall be carried out ... within the framework of the services granted and intended for the general public, after making such adjustments as may be required under the circumstances....” We ourselves ruled that the integration of the handicapped in the regular fabric of community life is intended to protect the dignity and the liberty of such persons, by ensuring equality and participation in society. H CJ 7081/93 *Botzer v. Municipal Council of Maccabim-Reut*, [3] at 19. This is the background for the interpretation of the Special Education Law.

Interpretation of the Law

8. As stated above, the questions raised by this petition are: Is the right to special education conferred by the Special Education Law

limited to special education provided in separate institutions for special education (as argued by the State)? Alternatively, does this right extend also to special education provided to children studying in the regular education system (as argued by petitioners)?

Our presumption is that statutes are interpreted in a manner commensurate with the basic values of the legal system. As such, our interpretations must accord with the principle of equality. *See, for example*, FH 10/69 *Boronovsky v. The Chief Rabbis of Israel*, [4] at 35; H CJ 153/87 *Shakdiel v. The Minister for Religious Affairs*, [5] at 275; H CJ 953/87, 1/88 *Poraz v. Mayor of Tel-Aviv/Jaffa*, [6] at 320-29. Similarly, statutory interpretation must harmonize with the right to education, including the right to special education.

Another rule of interpretation is the presumption that the norms adopted by the State should be in accord with the norms of international law by which the State is bound. According to this presumption, all rules will, wherever possible, be interpreted in a manner consistent with the norms of international law. *See* CrimA 131/67 *Kamier v. The State of Israel*, [7] at 80; CA 522/70 *Alkotov v. Shaheen*, [8] at 80; CrimA 3112/94 *Abu Chassan v. The State of Israel*, [9] at 430 (Landau, J.).

These interpretive presumptions may be rebutted only when the language of the statute, or its particular purpose as specified in the law, cannot be reconciled with the general values of the legal system or with the international norm. *See* *Poraz*, at 329-30 [6]; *Kamier*, [7] at 112.

9. For our purposes, the Special Education Law is intended to provide special education free of charge to any child with special needs, in order to ensure that he fulfills his potential and that he integrates into society. *See* also the Explanatory Notes to the Special Education Law Bill, 1988. The notes point out that special education is intended to aid integration into society and ensure the full development of the innate

potential – physical, intellectual, and emotional – of each student. This purpose conforms with and gives expression to the right to education, the principle of equality, and the international conventions ratified by the State of Israel.

Section 7 of the law, which discusses special education in a regular educational institution, does not specifically provide that such education must be funded by the State, as it provides in section 3 regarding special education in separate institutions and classes. However, in view of the rights to education and to equality, the principles of international law, as well as the purpose of the law as described above, the necessary conclusion is that the funding duty of the State also applies to the assistance required for a child with special needs integrated into a regular educational institution.

Until now, the State has been guided by a discriminatory interpretation, which leads to an unreasonable result. The Special Education Law prescribes two paths for the provision of special education. The first path is within the separate framework of special education. The second path is within the regular educational framework. In the latter path, children receive assistance as determined by the Placement Committee in accordance with their needs. It is implausible that the Knesset would have arbitrarily decided to limit the State's duty to provide free special education to only one of these statutory frameworks. This is especially true in light of the undisputed fact that the regular framework has substantial advantages.

Furthermore, it is unacceptable that parents of children with special needs should waive their children's right to integration within the framework of regular education solely due to financial difficulties. This would undermine the very heart of substantive equality. The aspiration for such equality is manifest in the goal to provide equal opportunities for every child in Israel. When children with special needs are sent to

frameworks for special education rather than the regular education framework – solely due to financial reasons – these children are deprived of this equal opportunity. Such discrimination is unacceptable.

10. The State's claim – that the duty of assistance under section 7 of the law is narrower than the duty set out by the definition of special education – is unacceptable. The provision regarding the recommendation for separate assistance is the natural result of placing a child with special needs in a regular educational framework. In such a case, it is the Placement Committee's duty to determine the type of assistance the child requires. This determination is classified as a "recommendation," not because the State is released from its duty to provide the assistance, but rather because flexibility is required in implementing the recommendation. This implementation must consider the evolving needs of the particular child.

The Remedy

11. A purposive interpretation of the law requires that the state implement it in accord with the principle of equality. Discharge of this duty requires an equal budgetary allocation for all the frameworks providing special education. In this context, a distinction must be made between the current budget and future budgets, beginning with the next fiscal year.

As for the future: it is clear that it is incumbent upon the Ministry of Education, with the assistance of the Ministry of Finance, to allocate its budget in a manner that implements the law as interpreted by this judgment. The Supreme Court has elucidated the nature of this obligation in the context of cemeteries, which are the responsibility of the Ministry for Religious Affairs:

In all of its actions, the Ministry for Religious Affairs, like

any public body, must be guided by the principle of equality; as such it must adhere to this principle already in the preparatory stages of the draft budget for the coming year. At this stage the workers of the Ministry, together with the workers of the Ministry of Finance, may adopt one of two main routes: The first is for the Ministry for Religious Affairs to stipulate the total amount designated for cemeteries of all religions in the draft budget itself. The Ministry for Religious Affairs will then divide that amount between the cemeteries of the different religions, naturally on the basis of equal allocation. The second route is for the Ministry for Religious Affairs to designate, in the draft budget, different amounts to the cemeteries of different religions.

HCJ 1113/99 *Adallah – Legal Center for the Rights of the Arab Minority in Israel v. The Minister for Religious Affairs*, [10] at 182 (Zamir, J.)

Similarly, in our case, the State must allocate its budget for the coming year in a manner that implements the right to education on the basis of equality. This can be done by the allocation of one global sum for educational expenses, to be subsequently divided up on an equal basis. Alternatively, this right can be realized by making a separate allocation, within the framework of the draft budget itself, of sums designated for the education of these children in institutions of special education as well as in regular schools.

And as for the present year: the appropriate remedy when human rights are violated is to compel the authorities to undo this breach immediately, even if this involves amending the budget structure. Such was the ruling of this Court in HCJ *Adallah*, [10] at 185-86:

Now it may well be that the Ministry for Religious Affairs has already decided on its budgetary allocation for cemeteries for the present

year; it may even have notified the particular bodies who are to receive the funds, and they would have certainly planned their activities for the year on the basis of that notification. Indeed, some of the money may already have been transferred, pursuant to such notification. Nonetheless, and despite the possible difficulty, the Ministry can still, and indeed, must uphold the principle of equality between the different cemeteries. This applies even at this stage of the year, regardless of any additional administrative burdens and any additional funding that may be required for the cemeteries. If indeed there is a need for additional funding, the Ministry for Religious Affairs must take measures (with the assistance of the Ministry of Finance, if required) to obtain it. Such measures may be achieved by economizing in other sections of the Ministry, by digging into the reserves of the Ministry, or by any other manner.

This is the rule, but in the present case it would be inappropriate for us to issue a rigid order, one that applies to the current fiscal year. For we fear that, as a result of the current dire economic straits in which the State finds itself, a renewed budgetary allocation would adversely affect those children with special needs currently being educated in special education institutions. In many cases the situation of these children is more acute than that of those in regular educational institutions, and it is not appropriate that the realization of the rights of the latter be at the expense of the former. Even now, however, the State should, wherever possible and at least partially, attempt to provide funding for the education of children with special needs in the regular educational institutions.

I therefore propose that the petition be accepted in the sense that it will be declared that the State has not discharged its statutory duty to provide free special education for children placed in regular educational institutions; that it must quickly adopt the measures necessary for it to come into compliance with the statutory requirements; and that it must comply with these requirements no later than the preparatory stages of the budget for the coming fiscal year, all subject to the restrictions of

section 7(e) of the law. I also suggest that the State should bear petitioners' costs, in the sum of NIS 15,000.

Justice E. Levi

I agree.

Justice T. Or

1. Petitioners suffer from Down Syndrome and, as such, they require special treatment and guidance in school. As with all other children of compulsory education age, each of them is entitled to free special education, pursuant to section 6 of the Compulsory Education Law, 1949. Our concern is whether they are also entitled to receive "special education" free of charge in a regular school. Petitioners assert that this right is conferred by statute. The State claims that the statute confers that right only to children with special needs who are studying in a special education institution, and not to those studying in a regular framework.

Like my colleague Justice Dorner, I also believe that the State is obligated to provide free special education (within the statutory limitation, *see infra* para. 10) to children with special needs who have been integrated into the regular framework of a recognized educational institution, and not only to children with special needs who have been integrated into a special education institution. In my view this is the

necessary conclusion to be drawn from the provisions of the Special Education Law, 1988.

2. The Special Education Law is concerned with providing special education to children with special needs. Section 1(a) of the law sets out the following definition of a "child with special needs:"

“child with special needs” – a person between the ages of three and twenty one who has limited ability for adaptive behavior and is in need of special education.

The special education required by the child with special needs is also defined in section 1(a) of the law:

“special education” – systematic instruction, teaching and treatment given under this law to a child with special needs, including physiotherapy, speech therapy, occupational therapy and treatments as per additional professional disciplines that shall be determined, all in accordance with the needs of the child with special needs;

The import of these two definitions is that a child with special needs is not only a child who receives special education in the framework of a special education institution, but also a child who has been integrated into a regular recognized educational institution.

3. According to the statute, a child with special needs may be directed by the educational authorities to one of two kinds of institutions. The first is a special education institution, defined by section 1(a) of the law as “a recognized educational institution in which special education is provided, including a class in a recognized educational institution in which special education is provided.” The second is a recognized educational institution, though not a special education institution, in which the child is integrated into a regular class. Placement Committees are authorized to place the child in either one of these frameworks. These committees were established pursuant to the statute, which prescribed the manner of their appointment, their composition, and their powers. See sections 5-13 of the law. The law also established an Appeal Committee, to which appeals can be made against the decisions of Placement Committees.

Recently, section 7(A1) was added to the law, and it provides for the possibility of placing a child with special needs in a special education institution even without a referral from the Placement Committee. See Special Education Law (Amendment No.6), 2002. Similarly, a child with special needs may be placed in a regular class even without a referral from the Placement Committee. Referrals by the Placement Committee, however, remain the principle manner of placement.

4. Section 7(b) of the law sets forth guidelines for the Placement Committee. It provides:

In determining the placement of a child with special needs, the Placement Committee shall prefer placement in a recognized educational institution which is not a special education institution.

These guidelines are directed towards the best interests of the special needs child. From the perspective of such a child, a regular study framework is preferable, if integration is possible. This is the position of the education authorities, of the Ministry of Education, and of the special committee established by the Minister of Education, the Margalit Committee. This recommendation is also consistent with the purpose of the law, which is to accommodate, as far as possible, the integration of children with special needs into society. This purpose is set out by section 2 of the law, which provides that:

2. The aim of special education is to advance and develop the skills and ability of the child with special needs, to improve his physical, intellectual, and emotional behavior, and to impart knowledge, skills and habits, and to facilitate his integration in both society and the workforce.

For our purposes, however, the important factor is that section 7(b)

regards all children referred by the Placement Committee to the framework of regular education as “children with special needs.” Such children are those who require “special education” as defined by the law, namely those children who require systematic instruction and teaching as provided by the statute, in accordance with their needs, within the definition of “special education” in the law.

5. The conclusion from all of the above is that placement of a child with special needs – whether in a special education institution or as an integrated child in a regular educational institution – is regulated by the law; and that “special education” is provided to both categories: both to the integrated child with special needs as well as to the child with special needs who learns in a special education institution.

6. It is against this background that section 4(a) of the law must be read. This section provides that “[t]he State is responsible for the provision of special education pursuant to this law.” This section must be interpreted to provide that it is the State’s responsibility to provide special education free of charge. As stated above, “special education” within the meaning of the law means special education provided for children with special needs. This applies regardless of whether such education takes place within a special education institution or within an institution for regular education. The term “pursuant to this law” in the concluding part of section 4(a) directs the interpreter of the law, first and foremost, to the definitions in section 1(a) of the law. As we observed above, these definitions designate special education for every child with special needs. Second, it directs him to the special arrangements of the statute concerning the manner of providing special education, which I will discuss below. I should also note that section 4(a) comes in addition to the provisions of section 3 of the law, which provides that a child with special needs studying in a special education institution is entitled to receive free education in that institution. Such education must, to the extent possible, be located near his place of residence.

This interpretation of section 4(a) is preferable to the alternative interpretation that the section only identifies the body that has responsibility for providing the special education which, pursuant to section 3(a), must be provided free of charge to those learning in a special education institution. The interpretation is preferable because it conforms with the interpretative principles elucidated by my colleague, Justice Dorner, especially the principle that a statutory provision must, whenever possible, be interpreted in a manner that does not discriminate. Justice Barak dwelled on this point in H CJ 507/81 *Abu Hatzeira v. The Attorney-General*, [11] at 561, 585:

A fundamental principle, which serves as a legislative purpose of all acts of the legislative body, is the principle of equality before the law One must therefore presume and interpret legislative acts as being intended to realize this purpose and not to contravene it

This is also true in our case. The interpretation that section 4(a) provides for free special education for all children with special needs accords with the principle of equality, and also accords with the general purpose of special education, as defined by the law itself. As such, this is the appropriate and correct interpretation of the section.

7. The current statutory arrangements regarding the two educational frameworks are not set out in the same amount of detail. The statutory arrangement concerning special education institutions is comprehensive. See chapter 4 of the statute. By contrast, the arrangement for the studies of integrated children is not detailed to the same extent. Nonetheless, the definition of “special education” in section 1(a) of the law makes it clear that special education must be adjusted to the needs of every child, including children integrated in the regular educational system. The definition even articulates the assistance that must be provided to all children in special education. Furthermore, section 7(c) instructs the

Placement Committee as follows:

Where a Placement Committee has decided on the placement of a child with special needs in an institution as defined in subsection (b), the Committee shall recommend the treatment or special lessons that he shall be given in that institution.

In other words, the law even regulates the procedure to be adopted by the Placement Committee when it recommends extra support for an integrated student. This arrangement is only partial, and does not touch on the details of the study program. In practice, as things currently stand, institutions for regular education in which children with special needs are studying must adjust their syllabus to the needs of those children.

The current absence of a statutory arrangement regulating the development of a syllabus for integrated children is undesirable. The legislature is aware of the problem and, at this time, steps are being taken to amend the law and add a chapter that regulates the development of a syllabus for integrated children. In December 2001 a bill was tabled in the Knesset, entitled “Special Education (Integration of Children with Special Needs into Regular Frameworks) Law, 2001.” This bill adds Chapter D1 to the statute, entitled “The Integration of a Child with Special Needs into the Regular Education System.” Section 20B of the bill provides:

An integrated child shall be entitled, within the framework of his studies in a regular institution, to additional systematic instruction and teaching, and to special services set out in this statute;

The amendment, however, does not affect the issue of free special education, to which integrated children are entitled under section 4(a) of the law.

8. In its arguments against this interpretation of section 4(a) the State relies primarily on the provisions of section 7(c) of the law. The State claims that the fact the Placement Committee can only *recommend* the treatments or lessons that are to be given to the integrated child indicates that the integrated child does not have *a right* to receive such treatments and lessons in the framework of the regular institution in which he is to study.

I concur with my colleague Justice Dorner; a different interpretation must be given to this provision. The latter does not purport to resolve the question of whether treatments and lessons required for integrated children are to be provided free of charge. For, as stated above, section 4(a) of the law answers that question. Section 7(a) is only intended to charge the Placement Committee with the duty of specifying what it considers to be the needs of the child. The Placement Committee examines and assesses the child's condition and may deem it appropriate to refer him to the regular education framework. Accordingly, and having regard for the Committee's knowledge of the particular circumstances of the child concerned, it is only natural that it be charged with informing the institution to which the child is referred regarding that child's special needs. The fact these provisions are limited to the Committee's recommendation regarding lessons and treatments does not derogate from the integrated child's right to receive free "special education," as defined by the statute. This right to special education is granted by other sections of the statute. It is not limited by the particular fact of the child's placement in an institution for regular education. Nor is it limited by the fact that the Placement Committee's opinion regarding the special education required by the child is only a recommendation.

9. It should be added that, in their response to the petition, respondents noted that they recognize the importance of the integration of children with special needs in regular education frameworks. They further mentioned that the Ministry of Education makes every effort to

use the resources at its disposal in order to advance the interests of children in integrated frameworks. In respondent's words:

There are guidelines for the teacher to develop individualized educational programs which take into consideration the specific learning difficulties of every student.

The principle of equality mandates the provision of tools for the integration of children with special needs into the framework of regular education. The principle requires equality between children with special needs in regular educational frameworks, and between children with special needs in special education frameworks. It also requires the provision of equal opportunities to children, regardless of any special needs they may have.

This is also the import of the Equal Rights for People with Disabilities Act, 1998, whose goal it is to integrate persons with disabilities into society.

I mention this fact in order to clarify that, even before this judgment, the Ministry of Education did not ignore the needs of integrated children, and made efforts to locate resources in order to provide financial aid. It is now clear, however, that the Ministry is obligated to provide free special education for all children with special needs.

10. The legislature was aware of the budgetary ramifications of the implementation of the law. Section 7(e) deals with this problem and establishes a mechanism for a "budget increase" in favor of special education. The section provides:

The Minister of Education, with the approval of the Minister of Finance, shall, with respect to each academic year, fix a budget for an increase in the number of persons entitled to special

education. The Minister of Education shall determine the number of entitled persons that the Placement Committee may approve for each academic year.

The existence of a “budget increase” mechanism attests to the real problem confronting those dealing with special education: the resources at their disposal do not enable the provision of free education for all children with special needs. This being the case, the Ministers are required to determine, on an annual basis, the quota for those entitled to special education. From now on, the Ministers will also have to include integrated children in the “budget increase” section. And, as clarified in the judgment of my colleague, Justice Dorner, this applies to the next budgetary year.

Based on all of the above, I concur with the opinion of my colleague, Justice Dorner.

Decided as per the opinion of Justice Dorner.
August 14, 2002