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# Comparing American Disability Laws to the Convention on the Rights of Persons with Disabilities with Respect to Postsecondary Education for Persons with Intellectual Disabilities

Kevin Walker

¶1 The Convention on the Rights of Persons with Disabilities (“CRPD”)<sup>1</sup> was adopted on March 30, 2007 and “is the first treaty to address disability rights globally.”<sup>2</sup> 158 countries have signed the CRPD, including the United States.<sup>3</sup> 138 of those countries have gone on to ratify the CRPD.<sup>4</sup> Despite strong support by many in the U.S., the CRPD has not received enough support in the Senate to be ratified.<sup>5</sup> In Article 1, the CRPD states that its purpose is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”<sup>6</sup> As part of this goal, the CRPD recognizes that disabled persons have a right to education, an issue that is addressed in Article 24 of the document.<sup>7</sup>

¶2 Research has been done in America to determine how the CRPD differs from American disability law. The results of these studies have varied to a degree, but mainly they have concluded that ratification of the CRPD would not require any substantial changes to American disability law. Largely, the findings of these studies have been that American disability law and the CRPD are harmonious and that the CRPD could be ratified by the U.S. with little change to current disability laws.<sup>8</sup>

¶3 The United States has been somewhat of a pioneer in the passage of disability rights law, and was one of the first countries to adopt substantial legislation mandating

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<sup>1</sup> Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter “CRPD”].

<sup>2</sup> *CRPD Convention on the Rights of Persons with Disabilities: Status and History*, U.S. INT’L COUNCIL ON DISABILITIES (June 2012), <http://www.usicd.org/doc/CRPDStatusHistoryJun2012.pdf>.

<sup>3</sup> Convention on the Rights, *supra* note 1. 158 countries have signed the CRPD as of the date of this writing.

<sup>4</sup> *Id.* As of the date of this writing, 138 of those countries have ratified the CRPD.

<sup>5</sup> *NCD Statement on Failed CRPD Ratification Vote in the Senate*, NAT’L COUNCIL ON DISABILITY (2012), <http://www.ncd.gov/newsroom/2012/120512>.

<sup>6</sup> CRPD, *supra* note 1, art. 1.

<sup>7</sup> *Id.* art. 24.

<sup>8</sup> NAT’L COUNCIL ON DISABILITY, FINDING THE GAPS: A COMPARATIVE ANALYSIS OF DISABILITY LAWS IN THE UNITED STATES TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) 31 (2008), <http://www.ncd.gov/publications/2008/May122008>.

rights for disabled persons.<sup>9</sup> When lending assistance to the committee that drafted the CRPD, the U.S. drew upon its experience with disability law.<sup>10</sup> When reading the CRPD, the influence of American disability law is unmistakable.

¶4 With the passage of the CRPD and as countries begin to adopt the CRPD, it remains to be seen what effect the treaty will have on countries around the world. Many of the changes will require substantial modification of individual countries' laws and practices. Undoubtedly, it will take a long time to see results from these changes. It has been twenty years since the passage of the Americans with Disabilities Act (ADA),<sup>11</sup> and the full benefit of the changes imposed by this legislation have yet to be seen.<sup>12</sup> These changes take time to implement.

¶5 Given the amount of time that it will take to realize the benefits of the CRPD, the effect of the CRPD on disability rights globally can only be speculated. A problem arises due to the time delay between ratification of the convention and the realization of the benefits of ratification. The problem is that it may take decades to realize the flaws or shortcomings of the CRPD. A similar situation has manifested in the U.S., where 20 years have passed since the most expansive legislation dealing with disability rights and issues are still arising where the laws do not adequately provide for the rights of disabled citizens.

¶6 The importance of ensuring the rights of the disabled globally cannot be underestimated, and there is no reason to wait twenty years to make changes to the law. Given the substantial similarities between the CRPD and American disability laws, it may be helpful to look to the challenges for disability rights in the U.S. and compare the American disability laws with respect to that issue with the relevant sections of the CRPD. This analysis may help predict whether the CRPD may deal with these problems in a more effective manner.

¶7 One challenge for the CRPD is that it needs to be tailored so that it is applicable to numerous, diverse countries. Some countries face problems with providing basic needs like food and water for disabled persons.<sup>13</sup> Fortunately, America and many industrialized countries are not faced with this problem, at least not to as great of an extent. However, even in industrialized countries like the U.S., where the standard of living is high for the general population, "persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant."<sup>14</sup> If the treaty only includes provisions that can be followed by all countries, a low hurdle is

<sup>9</sup> U.S. STATE DEP'T, REPORT OF THE UNITED STATES OF AMERICA SUBMITTED TO THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS IN CONJUNCTION WITH THE UNIVERSAL PERIODIC REVIEW 9 (2010), <http://www.state.gov/documents/organization/146379.pdf>.

<sup>10</sup> NAT'L COUNCIL ON DISABILITY, *supra* note 5, preamble.

<sup>11</sup> Americans with Disabilities Act, 42 U.S.C. §§12101-12213 (1990).

<sup>12</sup> Suzanne Robetaille, *Americans with Disabilities Act Turns 20*, USA TODAY (Jul. 26, 2010), [http://usatoday30.usatoday.com/news/health/2010-07-26-disabilities-act\\_N.htm](http://usatoday30.usatoday.com/news/health/2010-07-26-disabilities-act_N.htm).

<sup>13</sup> Office of the High Comm'r for Human Rights, *CESCR General Comment No. 5: Persons with Disabilities*, ¶ 1, U.N. Doc. E/1995/22 (Dec. 9, 1994) ("[D]isability is closely linked to economic and social factors' . . . 'conditions of living in large parts of the world are so desperate that the provision of basic needs for all—food, water, shelter, health protection and education—must form the cornerstone of national programmes.' Even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant.").

<sup>14</sup> *Id.*

set for industrialized countries like the U.S. The CRPD gets around this issue by using Article 4(2), which keeps poorer countries from having to comply with articles that they cannot economically afford.<sup>15</sup> This allows for the implementation of articles that are relevant to industrialized countries without the fear that poorer countries will be unable to adopt the Convention based on one article that would not be economically feasible for them to implement.

¶8 Despite being immune to some of the issues that economically-challenged countries face, the U.S. has a number of issues that remain to be addressed with respect to the rights of disabled persons. This article does not cover all of the challenges facing disabled persons in the U.S. Rather, it will focus on postsecondary education (PSE) for persons with intellectual disabilities (ID).<sup>16</sup> Specifically, this article will briefly discuss the U.S. disability laws and examine issues with PSE opportunities for persons with ID in the United States. Next, it will examine the corresponding provisions of the CRPD, compare it to the U.S. laws, and make suggestions about how the CRPD can be amended to provide better PSE outcomes for persons with ID. Hopefully, this analysis will shed some light on whether the CRPD will adequately ensure that postsecondary education is available on a truly equal basis to disabled persons, which is a necessary part of ensuring that they are developed to their full potential and one of the overall goals of the CRPD.

#### I. BRIEF OVERVIEW OF DISABILITY LAWS IN THE UNITED STATES

¶9 The United States was one of the first countries to pass expansive disability rights legislation. The Americans with Disabilities Act (ADA), passed in 1990, is the most expansive of the various U.S. disability laws. All public educational institutions have to meet the requirements of Title II of the ADA and private educational institutions have to meet the requirements of Title III.<sup>17</sup> Other relevant disability laws include the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973.<sup>18</sup>

¶10 The IDEA is the “primary statutory vehicle for the educational rights of persons with disabilities.”<sup>19</sup> Subpart D of Title 34 of the Code of Federal Regulations “applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.”<sup>20</sup> In 34 C.F.R. § 104.33(a), there are some limits to the level of education that must be provided to disabled persons. A secondary education program is the highest level of education

<sup>15</sup> CRPD, *supra* note 1, art. 4(2). Article 4(2) is discussed in more detail later in this paper.

<sup>16</sup> The definition of an intellectual disability is a person that has “significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.” 34 C.F.R. § 300.8(c)(6) (2010). An example of an intellectual disability is mental retardation. *Intellectual Disabilities: NICHCY Disability Fact Sheet #8*, NAT’L DISSEMINATION CTR. FOR CHILDREN WITH DISABILITIES (NICHCY) (Jan. 2011), <http://nichcy.org/wp-content/uploads/docs/fs8.pdf>. Until “October 2010, IDEA used the term ‘mental retardation’ instead of ‘intellectual disability.’” *Id.* Although the term changed, the definition itself remained the same.

<sup>17</sup> NAT’L COUNCIL ON DISABILITY, *supra* note 8, at 93.

<sup>18</sup> *See id.*

<sup>19</sup> *Id.* at 90.

<sup>20</sup> 34 C.F.R. § 104.31 (2012).

guaranteed to disabled persons.<sup>21</sup> “The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.”<sup>22</sup>

¶11 Subpart E of Title 34 of the Code of Federal Regulations contains regulations that deal with PSE: “[q]ualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.”<sup>23</sup> In other words, disabled persons cannot be discriminated against and denied admission to a postsecondary educational institution on the basis of their disability. This sounds acceptable at first, but in practice has done nothing for a large subset of the disabled population. Courts in the United States have held that the requirement that educational entities not discriminate on the basis of disability applies to the physical accessibility of the entities’ facilities.<sup>24</sup> Because this requirement has been held to only apply to the accessibility of the facility, it does little to increase access to PSE programs for persons with ID.

¶12 Disabled persons in the U.S., as a whole, have been disadvantaged with respect to PSE opportunities. Because subsets of the disabled population have different and unique challenges, each subset of the group may face unique challenges with respect to PSE opportunities. U.S. disability law has taken strides to improve accessibility for the physically disabled in public areas, including accessibility to institutions of higher learning as seen in the application of 34 C.F.R. § 104.42(a). The legislation and regulations dealing with physical access to PSE institutions have been somewhat effective in increasing access for persons with physical disabilities. While many problems still persist with respect to physical accessibility, the measures taken are a start in the right direction and have allowed individuals with physical disabilities to participate in postsecondary education on a more inclusive basis.

¶13 However, U.S. disability laws have largely failed to deal with the PSE needs of individuals with intellectual disabilities. IDEA requires that free and appropriate education be available to persons with disabilities until they reach the age of 21.<sup>25</sup> This is typically thought of as the main statute providing for the educational rights of persons with disabilities.<sup>26</sup> For persons with ID, American disability laws have failed to do much of anything after the completion of secondary school, leaving this subset of disabled persons with few viable options once they age out of the IDEA protections.

¶14 The government sought to remedy this failure with the implementation of the Higher Education Opportunity Act of 2008 (HEOA).<sup>27</sup> This was the first piece of legislation designed to give students with ID the ability to participate in PSE.<sup>28</sup> The

<sup>21</sup> See 34 C.F.R. § 104.33(a) (2012) (“A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s handicap.”)

<sup>22</sup> 20 U.S.C. § 1401(27) (2006).

<sup>23</sup> 34 C.F.R. § 104.42(a) (2012).

<sup>24</sup> NAT’L COUNCIL ON DISABILITY, *supra* note 8, at 93.

<sup>25</sup> Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1412(a)(1)(A) (2004).

<sup>26</sup> NAT’L COUNCIL ON DISABILITY, *supra* note 5, at 91.

<sup>27</sup> Higher Education Opportunity Act of 2008 (HEOA), Pub. L. No. 110 –315, 118 Stat. 493 (2008).

<sup>28</sup> Colleen Thoma et al., *The State of Postsecondary Education for Persons with Intellectual Disabilities: What are the Perceptions of Key Stakeholders?*, 3 CREATIVE EDUC. 1122, 1123 (2012).

HEOA established a grant program that funds the development of PSE programs designed for persons with ID.<sup>29</sup> The HEOA legislation signified a huge step in the right direction for intellectually disabled persons' rights, but still has come up short in a number of ways.

## II. ISSUES WITH POSTSECONDARY EDUCATION IN THE UNITED STATES: OPPORTUNITY AND CLARITY

¶15 By 2018, two-thirds of all jobs in the United States will require postsecondary education.<sup>30</sup> New jobs in the U.S. and other industrialized nations require PSE training to obtain employment, and it is important for persons with ID to be able to further their job training through PSE. In the U.S., persons with disabilities have equal access to admission. However, persons with ID do not have equal opportunity to existing postsecondary educational programs because many of them are not capable of meeting the admission requirements. This would be an acceptable result if there were other programs available, but such programs, largely, do not exist. When taking a narrow view of the issue, it seems logical to say that programs should be equally available to all based on merit. However, when considering the situation from a broader perspective, it only makes sense if there is another option for those who are denied the ability to pursue higher education. This is not the case in America, where there is a lack of alternative PSE programs for persons with ID to pursue. These programs are designed to be equally available, but logic points in the opposite direction. The programs that are available have been funded by the government and are tailored to the general population. A program tailored to the general population creates opportunities for everyone except a certain group, leaving that marginalized group with few opportunities.

¶16 In 2009, the U.S. federal government spent \$37 billion dollars on PSE.<sup>31</sup> In 2000, the federal government spent just over \$19 billion on PSE.<sup>32</sup> That is an increase of 93 percent after adjusting for inflation.<sup>33</sup> This suggests that federal spending on PSE will continue to increase in the future. Formal projections of government spending on PSE programs are forecasting continued growth in the amount of federal funds allocated for PSE.<sup>34</sup> While it is true that after 2008, the amounts allocated for PSE contained amounts dedicated for programs designed for persons with ID, it is important to recognize that the government has been spending money on PSE programs for a long time and has only recently made an effort to spend money on creating PSE opportunities for persons with ID. It is inherently unfair to only create programs for part of the population. Tax dollars

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<sup>29</sup> Jessica Calefati, *College is Possible for Students with Intellectual Disabilities*, U.S. NEWS (Feb. 13, 2009), <http://www.usnews.com/education/articles/2009/02/13/college-is-possible-for-students-with-intellectual-disabilities>.

<sup>30</sup> AM. ASS'N OF CMTY. CS., RECLAIMING THE AMERICAN DREAM—RECOMMENDATIONS FROM THE AACC 21<sup>ST</sup> CENTURY COMMISSION ON THE FUTURE OF COMMUNITY COLLEGES 4 (2012), [http://www.ccac.edu/files/PDF\\_Document/5c735e310968401a86841e6ea1438213.pdf](http://www.ccac.edu/files/PDF_Document/5c735e310968401a86841e6ea1438213.pdf) (the figures in this study are adjusted for inflation to year 2010 equivalents).

<sup>31</sup> THOMAS D. SNYDER & SALLY A. DILLOW, DIGEST OF EDUCATION STATISTICS 2010 (NCES 2011-015) 537 (2011), <http://www.eric.ed.gov/PDFS/ED518987.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

come in from families of persons with ID and are farmed out to fund programs for everyone else—except that family’s child and other persons with ID.

¶17 Relief may finally be on the way with the passage of the HEOA. Institutions have begun to create PSE options for persons with ID. Numerous articles have been written describing the various forms of new PSE models that are being created: “[g]iven all the recent advances in the field of postsecondary education for individuals with intellectual disabilities, one might assume that this area has well-established common values, strong philosophical foundations, consistent data-driven practices, and widely available existing services. Evidence of progress abounds.”<sup>35</sup> This evidence of progress, while positive, needs to be tempered, because it may be misleading. The accomplishments that have been made thus far have had little impact for many students who have ID.<sup>36</sup> In fact, “they may serve as a frustrating reminder of the paucity of available options.”<sup>37</sup> Despite the merits of the recent developments in postsecondary educational opportunities for persons with ID in the U.S., there continues to be a general lack of options available for persons with ID. Some states do not have any of these programs.<sup>38</sup> Even in states that do have these programs, there are varying required qualifications to be admitted to the different programs. So, depending on the state an intellectually disabled person lives in and the degree of their intellectual disability, there may not be a suitable program. If the ID is severe or the individual lives in Montana, they are potentially out of luck.

¶18 Further contributing to these woes is the lack of information about the options that are available.<sup>39</sup> PSE options for students with ID range from programs that serve one individual to programs that serve up to 150 individuals.<sup>40</sup> There is a substantial amount of variance between the programs with respect to type of instruction, emphasis on pragmatism, and the learning environment.<sup>41</sup> “The current heterogeneity of the PSE programs lends itself to a lack of clarity concerning common characteristics amongst programs.”<sup>42</sup> In a recent survey of parents of students with ID and their understanding of PSE options, 73 percent of the respondents said that they lacked “general information and

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<sup>35</sup> Meg Grigal, Debra Hart, & Sharon Lewis, *A Prelude to Progress: The Evolution of Postsecondary Education for Students with Intellectual Disabilities*, THINK COLLEGE! (2012), [http://www.thinkcollege.net/images/stories/Insight\\_12\\_web\\_F.pdf](http://www.thinkcollege.net/images/stories/Insight_12_web_F.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *What’s happening in Your State*, THINK COLLEGE!, <http://www.thinkcollege.net/whats-happening-in-your-state>. (contains a list of programs available in each state).

<sup>39</sup> Megan M. Griffin, Elise D. McMillan, & Robert M. Hodapp, *Perspectives on Post-Secondary Education for Students with Intellectual Disabilities*, 45 EDUC. AND TRAINING IN AUTISM AND DEVELOPMENTAL DISABILITIES 339, 342 (2010) (“Beyond inadequate transition planning, parents also reported many other barriers to understanding PSE options for their children. Most respondents (73%) reported a “lack of general information or guidance,” and the next most-reported barriers were “school and other staff did not help me understand” (36%), and “financial constraints” (36%). Finally, many respondents reported barriers related to services: “different services did not work well together” (30%); “long waiting list for explanation of services” (26%); and “staff from different services gave conflicting advice” (25%). Thirteen percent reported that “written and online materials were difficult to understand;” 9% of all respondents reported that they did not encounter any barriers.”)

<sup>40</sup> Thoma et al., *supra* note 28, at 1128.

<sup>41</sup> *Id.* at 1123.

<sup>42</sup> *Id.*

guidance” on available PSE options.<sup>43</sup> That same study reported that some parents were given conflicting advice from the various staff members of these institutions, and a portion of the parents had a difficult time understanding the information that was available online.<sup>44</sup> There are few PSE options available to these persons with ID and the lack of information prevents access to the available options.

### III. ISSUES WITH POSTSECONDARY EDUCATION IN THE UNITED STATES: INCLUSIVITY

¶19 Postsecondary education is a significant part of Americans’ lives. It appears that in the U.S. and other industrialized nations, the importance of PSE will continue to rise in the years to come.<sup>45</sup> Most high school students in the U.S. have the opportunity to benefit from some form of PSE. Hopefully with the passage of HEOA, PSE opportunities for individuals with ID will increase. However, even if enough programs became available to meet the demand of all persons with ID, there will still be a problem with many of these programs: many of the programs are not inclusive. Although there is a broad range of programs available with varying degrees of inclusion, some with no inclusion and others with a substantial amount of inclusion, the majority of the programs are not inclusive. While it is true that more inclusive models of PSE are replacing some of the programs that are not inclusive, even these models vary in the amount of exposure the students have to other students who do not have ID.<sup>46</sup> Of the students who have ID that move onto PSE programs, most have typically “moved from segregated high school programs into segregated adult programs.”<sup>47</sup> This is an unfortunate reality, because interaction with other students is a huge part of the PSE experience. A recent study of Canadian PSE programs for persons with ID found several important benefits of inclusive PSE programs.<sup>48</sup> One of the benefits cited in the study was the improved confidence of individuals with ID with respect to their outlook on the future generally and their ability to obtain employment in the future.<sup>49</sup> Another benefit cited was the positive impact that inclusive PSE had on the other students and the institution as a whole.<sup>50</sup> One professor that was interviewed as part of the study thought that the inclusion of persons with ID positively affected the classroom experience for all, and presented “teaching opportunities that are unavailable when a group is more homogenous.”<sup>51</sup>

<sup>43</sup> Griffin et al., *supra* note 39, at 342.

<sup>44</sup> *Id.*

<sup>45</sup> AM. ASS’N OF CMTY. CS., *supra* note 30, at 4.

<sup>46</sup> Debra Hart, et al., *Postsecondary Options for Students with Intellectual Disabilities*, INSTITUTE FOR COMMUNITY INCLUSION (Aug. 2006), [http://www.thinkcollege.net/administrator/components/com\\_resdb/files/224\\_pse%20options.pdf](http://www.thinkcollege.net/administrator/components/com_resdb/files/224_pse%20options.pdf).

<sup>47</sup> Donna C. Martinez & Jessica Queener, *Postsecondary Education for Students with Intellectual Disabilities*, THE GEORGE WASHINGTON UNIV. HEALTH RES. CTR. (2010), <http://www.chooseyourfuture.org/sites/default/files/2010-gwu-postsecondary-ed-for-students-w-disabilities.pdf>.

<sup>48</sup> JUDITH MOSOFF, JOE GREENHOLZ & TAMARA HURTADO, ASSESSMENT OF INCLUSIVE POST-SECONDARY EDUCATION FOR YOUNG ADULTS WITH DEVELOPMENTAL DISABILITIES (Nov. 2009), <http://www.ccl-cca.ca/pdfs/fundedresearch/Mosoff-FinalReport.pdf>.

<sup>49</sup> *Id.* at 27.

<sup>50</sup> *Id.* at 31.

<sup>51</sup> *Id.* at 32. (“A mix of students from varied backgrounds, possessing varied abilities and interests, inevitably enhances learning.”)

¶20 Historical understandings of disabilities have focused on the impairments of a person and the medical treatment that could address the person’s impairment.<sup>52</sup> This way of thinking about disabilities is changing and a new way of understanding disabilities has developed. Some people are calling this new framework of understanding disabilities the “social” model.<sup>53</sup> Advocates for this model argue that it combats other disadvantages that persons with disabilities face.<sup>54</sup> One of these is the attitudinal barrier that prevents people from being included in society.<sup>55</sup> The inclusive model of education embodies the principles of the social model. When persons with disabilities are separated from the mainstream in education, they are not able to interact with the mainstream population. Inclusive education is important because of the impact it has on both the disabled persons and the rest of the students. When disabled persons with ID are included in the student body, the interaction combats the attitudinal barrier that develops when they are segregated from the other students.

¶21 Attitudinal barriers have devastating consequences. As a result of non-inclusive education, at any level, the general population begins to see disabled persons as different. Obviously, this negatively impacts disabled persons’ ability to participate fully in society. This also has lasting effects on the personal relationships that disabled persons are able to develop, as well as an effect on disabled persons’ ability to gain employment in the workforce. Considering that PSE is a form of job training, it is a natural consequence of non-inclusive education that attitudinal barriers present challenges for disabled persons seeking employment. Not surprisingly, persons with ID have devastatingly low employment outcomes, and attitudinal barriers have been cited as one of the reasons why.<sup>56</sup> In order to integrate the disabled fully into society, students need to interact with the disabled students on campus. Students cannot be expected to be familiar with and tolerant of disabled persons when they encounter them in the workforce if they spend their entire education on a campus where there are no disabled persons. Having non-disabled students interact with disabled persons is good for both parties in order to facilitate the integration of disabled persons into the work force.

¶22 Another problem that results from non-inclusive educational models relates to how persons with ID view themselves. Because they are separated from the rest of the population, they start to see themselves differently than their non-disabled peers. They can become uncomfortable and lose self-esteem. This is a significant issue and demonstrates why the inclusive model is important at all levels of education, including PSE. Inclusive PSE is important in the U.S. because of how important the experience of PSE is in the lives of the general population.<sup>57</sup> “The growth that students experience in

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<sup>52</sup> KELLEY LOPER, EQUALITY LAW AND INCLUSION IN EDUCATION RECOMMENDATIONS FOR LEGAL REFORM 3 (Oct. 2010), <http://www.law.hku.hk/hrportal/wp-content/uploads/file/EqualityLawandInclusioninEducation-RecommendationsforReform.pdf>.

<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Michelle Diamant, *Senate Looks to Tackle ‘Shockingly Low’ Disability Employment*, DAILY SCOOP (Mar. 2, 2011), <http://www.disabilityscoop.com/2011/03/02/senate-low-employment/12459/> (describing the discussion of a Senate meeting regarding the issues facing persons with intellectual disabilities who are seeking employment, stating that employment among persons with intellectual disabilities “is estimated to be as low as 23.9 percent,” and noting that “increasing employment opportunities relies on having high expectations and working closely with businesses to remove attitudinal barriers.”).

<sup>57</sup> Hart et al., *supra* note 46, at 1.

college can be measured in a number of areas, including academic and personal skill-building, employment, independence, self-advocacy, and self-confidence.”<sup>58</sup> During this time, disabled persons can build self-esteem, because “they begin to see themselves as more similar than different compared to their peers without disabilities.”<sup>59</sup> Being immersed in the life of a “typical” college student affords persons with ID the ability to begin seeing themselves as part of the general population, and allows them to build general skills that are necessary to be successful in the workforce and adult life.<sup>60</sup> By excluding persons with ID from this experience, they are excluded from the social aspect of the PSE experience. They know that they are not able to participate in the same experience with people that they see as their peers and this has a negative psychological impact.

¶23 It is important that persons with ID not only have the ability to benefit from educational training, but also that they have an inclusive experience while doing so. The more time disabled persons spend segregated from the general population, the bigger the barrier becomes that keeps them from participating in the workforce and engaging in the community. The effects of these segregated learning experiences can be clearly seen. There is evidence of non-inclusive PSE in the everyday interactions between the general population and persons with ID. The more the general population participates in PSE, the more important it is for persons with ID to participate in PSE on an inclusive basis. This is important not just to be competitive in obtaining employment in the workforce, but also to be a part of the community. Unfortunately, persons with ID are often not included in mainstream education.

#### IV. CRPD: BACKGROUND INFORMATION

¶24 This treaty arose from collective effort of an ad hoc committee that was established to research what measures should be taken to ensure that disabled persons were able to enjoy the rights conferred upon all by previous UN treaties.<sup>61</sup> In realization of this goal, the committee produced a treaty that does not create new human rights, but rather “describes the obligations of countries to promote, protect and ensure the rights of persons with disabilities.”<sup>62</sup> It is logical to question the need for a treaty that covers rights already established in other treaties. The existence of the CRPD implicitly recognizes that countries participating in U.N. human rights treaties have overlooked the disabled when taking measures to ensure that their citizens enjoy the rights outlined in the document. Its purpose is to raise awareness and provide protections to ensure that participating countries do not overlook the rights of the disabled.<sup>63</sup> “The Ad Hoc Committee’s task was to develop a text that would ensure full and effective enjoyment of all existing human rights, ensuring accessibility to all human rights while negotiating no new rights.”<sup>64</sup> As a

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> MARIANNE SCHULZE, UNDERSTANDING THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 16 (2009), [http://uncrpd.nileshsingit.org/uncrpd-downloads/HI\\_CRPD\\_Manual\\_sept2009\\_final.pdf?attredirects=0&d=1](http://uncrpd.nileshsingit.org/uncrpd-downloads/HI_CRPD_Manual_sept2009_final.pdf?attredirects=0&d=1).

<sup>62</sup> U.S. INT’L COUNCIL ON DISABILITIES, *supra* note 2, at 1.

<sup>63</sup> LOPER et al., *supra* note 52, at 13.

<sup>64</sup> SCHULZE, *supra* note 61, at 16.

result of this, the CRPD is “based on the UN’s Bill of Rights and its specialized treaties.”<sup>65</sup>

¶25 The CRPD is structured similarly to other human rights conventions.<sup>66</sup> There are introductory provisions in the beginning that contain definitions, and also articles that have basic principles to be applied to the rest of the treaty.<sup>67</sup> Article 1 lays out the purpose of the treaty, which is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”<sup>68</sup> This is followed by the definitions in Article 2, and general principles in Article 3.

¶26 In Article 24 we see the provisions for education. Article 24(1) states generally that, “States Parties recognize the right of persons with disabilities to education.”<sup>69</sup> It then goes on to say that the States Parties shall ensure that disabled persons are provided an equal opportunity, free from discrimination, to an inclusive education system.<sup>70</sup> It states that the States Parties shall ensure inclusion at all levels of education and lifelong learning.<sup>71</sup> Lastly, it says that the goal of this should be directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.<sup>72</sup>

¶27 Following 24(1), Article 24(2) says that in realization of disabled persons’ right to education, States Parties shall ensure a list of things to persons with disabilities. Article 24(2)(a) says that disabled persons should not be excluded on the basis of disability from the general education system.<sup>73</sup> It also says that they should not be “excluded from free and compulsory primary education, or from secondary education, on the basis of disability”.<sup>74</sup> A key provision of 24(2) is section (b), which states, “Persons with disabilities can access an inclusive, quality and free primary and secondary education on

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<sup>65</sup> *Id.* (“The text was thus to be based on the UN’s Bill of Rights and its specialized treaties: the International Convention on the Elimination of All Forms of Racism (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the United Nations Convention on the Rights of the Child (CRC), and the International Convention on Protection of Rights of Migrant Workers and their Families (CMRW).”)

<sup>66</sup> Janet E. Lord, *The U.N. Disability Convention Creating Opportunities for Participation*, BUSINESS LAW TODAY (May 2010), <http://apps.americanbar.org/buslaw/blt/2010-05-06/lord.shtml>.

<sup>67</sup> *Id.*

<sup>68</sup> CRPD, *supra* note 1, art. 1

<sup>69</sup> *Id.* art. 24(1).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* art. 24(2)(a).

<sup>74</sup> *Id.*

an equal basis with others in the communities in which they live.”<sup>75</sup> Later in Article 24(5), the CRPD says that persons with disabilities should be ensured “access to general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.”<sup>76</sup> It then says, “[t]o this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.”<sup>77</sup>

¶28 The adoption of this Convention is significant because it raises the level of awareness globally with respect to the rights of disabled persons. It “places the protection of full and effective enjoyment of human rights by persons with disabilities at the same level—and thus equally visible—as the other specialized human rights treaties.”<sup>78</sup>

## V. SIMILARITIES BETWEEN CRPD AND US DISABILITY LAWS

¶29 Comparing U.S. disability law with the CRPD with respect to education presents a picture of what challenges the CRPD may face with respect to PSE for persons with ID. Comparing the preschool, elementary, and secondary education provisions, as well as the PSE provisions of American disability law with the relevant CRPD provisions will be helpful in predicting the effectiveness of the CRPD.

¶30 Article 24 of the CRPD provides the goals for education.<sup>79</sup> The problem with Article 24 is that it provides a lofty end and suggests inadequate means to reach it. The first sentence says that persons with disabilities have a right to education. The second sentence is troubling though; it says that the parties should ensure inclusive education at all levels by way of making sure that there is equal opportunity to higher education. How does this ensure inclusive education? A comparison with American disability law shows that this will not necessarily ensure full and effective inclusion. American postsecondary educational laws can be found in 34 C.F.R. § 104.41.<sup>80</sup> Overt discrimination has been at bay in the U.S. for over 20 years now and the PSE programs are still not inclusive for persons with ID.<sup>81</sup> The absence of discrimination does not connote inclusivity.

¶31 Subpart D of Title 34 C.F.R. deals with preschool, elementary, and secondary school. Subpart E of Title 34 C.F.R. deals with postsecondary education. However, with respect to PSE, Subpart E has been interpreted to only require physical accessibility to PSE facilities. The IDEA requires free and appropriate education for persons with disabilities up until the age of 21. The IDEA most closely resembles Article 24(2) of the CRPD, and 34 C.F.R §§ 104.41-104.47 most closely resemble Article 24(5). The CRPD, like its American counterpart, separates the PSE provisions from the other forms of education. Without looking at the substance of any of the provisions, the reader knows that PSE is treated as a separate matter from the other forms of education. There would

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<sup>75</sup> *Id.* art. 24(2)(b).

<sup>76</sup> *Id.* art. 24(5).

<sup>77</sup> *Id.*

<sup>78</sup> SCHULZE, *supra* note 61, at 17.

<sup>79</sup> CRPD, *supra* note 1, art. 24.

<sup>80</sup> 34 C.F.R §§ 104.41-104.47 (2013).

<sup>81</sup> *Id.* § 104.42(a). (“General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.”)

be no other reason for it to be separated from the other provisions. So, with the American disability law already in effect, the CRPD could have taken a hard stance in favor of inclusive PSE by grouping postsecondary education in with other forms of education. However, the CRPD chose to follow the same path as the U.S. and set PSE off to the side. We see the manifestation of the isolation within Article 24. Article 24(2) covers primary and secondary education, and Article 24(5) covers postsecondary education. This was the CRPD's first missed opportunity to take a strong stance on PSE.

¶32 We look now to Article 24(5) of the CRPD, which mandates that:

States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.<sup>82</sup>

¶33 The relevant portion of U.S. disability law states, “[q]ualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.”<sup>83</sup> These two sections are similar. Reasonable accommodation is defined in Article 2 of the CRPD. The CRPD defines “reasonable accommodation” to mean “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”<sup>84</sup> Reasonable accommodation is a term that was introduced in American disability laws.<sup>85</sup> The ADA “provides for reasonable accommodation as any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy equal employment opportunities.”<sup>86</sup>

¶34 Article 24(5) of the CRPD appears to be similar to its American counterpart, and likely will only provide greater physical access to PSE facilities. This is not to say that this is not important; greater physical access is a very important issue. However, for persons with ID, ensuring greater physical access alone will not provide them with increased opportunity to many existing PSE programs.

¶35 Not surprisingly, studies comparing the CRPD to American Disability laws have found them to be very similar. Many of these reports have aimed at comparing current U.S. disability law with the CRPD in order to determine whether modifications would be required for the U.S. to bring their current law up to CRPD standards. It appears that as a result of American disability laws being used as partial inspiration for the CRPD, the CRPD is generally harmonious with American disability laws.<sup>87</sup>

<sup>82</sup> CRPD, *supra* note 1, art. 24(5).

<sup>83</sup> 34 C.F.R. § 104.42(a) (2013).

<sup>84</sup> CRPD, *supra* note 1, art. 2.

<sup>85</sup> SCHULZE, *supra* note 61, at 35.

<sup>86</sup> *Id.*

<sup>87</sup> NAT'L COUNCIL ON DISABILITY, *supra* note 5, at 1.

## VI. SUGGESTED CHANGES TO THE CRPD

¶36 It appears from the textual similarities that the CRPD may be subject to some of the same criticisms that U.S. laws have received. By way of reason, it can be assumed that a treaty substantially similar to the current legislation of the U.S., when adopted by other countries, could result in newly adopting countries obtaining similar results to the U.S. This does not mean that the newly adopting countries of the CRPD will automatically obtain results that are the same as the U.S. Some State Parties may enforce laws that are more or less strict than those in the U.S. It is difficult to say exactly how other countries will interpret the CRPD or choose to implement ideals of the CRPD in their own laws. However, with the U.S. currently facing issues with laws that are very similar, it is safe to assume that a similar result is possible.

¶37 Because of the similarities between the CRPD and U.S. laws, it appears that the CRPD is vulnerable to some of the problems that the U.S. has encountered with respect to PSE. “Education policies and practices reflect the knowledge base and values of their time, and provide a foundation for future expansion and innovation.”<sup>88</sup> The history of how disability laws have developed over time in America shows that changes to the existing laws are only made when the injustice is so egregious that public outcry mandates it. Looking back, there was a time not too long ago when “students with an intellectual disability did not have the right to access public primary or high-school education, let alone college.”<sup>89</sup> It is unfortunate that the CRPD did not go further than it did to mandate inclusive postsecondary educational opportunities for persons with ID, because as we have seen with American disability laws like the ADA, IDEA, and the HEOA, as things change over time, disabled persons are usually the last to be accommodated.

¶38 One thing to consider when looking at treaties is the differences between the participating countries in their ability to comply with the treaty. In many human rights treaties, the CRPD included, there is substantial variance in the economic status of the participating countries. As we see in Article 4(2) of the CRPD, there is a reference to the participating countries’ abilities to conform to the standards of the treaty. The CRPD says that states will contribute to the economic, social, and cultural rights to the “maximum of its available resources.”<sup>90</sup> This is an important consideration when evaluating the educational provisions of the CRPD. In some countries, only primary education is free and compulsory, but secondary education or PSE are not.<sup>91</sup> In these countries, mandatory PSE for disabled persons is not a realistic provision, because the majority of the general population will not be able to receive PSE. This is why Article 4(2) of the CRPD is important—because it allows poorer countries to be exempted from those provisions, which they cannot afford to provide until their economic condition improves.

¶39 In a country like the U.S. where the standard of living is high, the economic issue is not as big of a problem as it is in less developed countries. As countries become more developed and industrialized, they are able to comply with the requirements of the CRPD

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<sup>88</sup> Grigal et al., *supra* note 35, at 2.

<sup>89</sup> *Id.* at 1.

<sup>90</sup> CRPD, *supra* note 1, art. 4(2).

<sup>91</sup> SCHULZE, *supra* note 61, at 123.

and may do so at that time. As the global marketplace evolves, the workforce in industrialized nations like the U.S. has had to respond by becoming more educated. Unfortunately, as the general population adapts, disabled persons are usually the last ones to be accommodated. One problem with social change is that there is often no recognition of that issue until it is too late. The U.S. recognized in 2008 that disabled persons were being disadvantaged in the workplace because they were not able to get the job training they needed, and thus the HEOA was passed. However, this problem existed before 2008, and it will be much longer before this problem is fixed.

¶40 As countries in other parts of the world develop and become industrialized, they will face many of the challenges that the U.S. has faced. The CRPD will hopefully be able to serve as a guide for them in many areas where they can implement change as the economic condition of their country improves. One potential benefit of the CRPD is that it will help countries to stay current and recognize that their disability laws need to develop along with the rest of the country, not twenty years later. Having seen the development of disability laws in the U.S., the CRPD could have been drafted to incorporate the shortcomings of the U.S. laws. Unfortunately this was a missed opportunity with respect to postsecondary education; however, by amending Article 24, the CRPD could take advantage of what has been learned from the United States.

¶41 One potential remedy would be to amend Article 24(5). Article 24(5) could be changed from, “[States] shall ensure that persons with disabilities are able to access general tertiary education... without discrimination and on an equal basis with others,”<sup>92</sup> to read, “States shall ensure that persons with disabilities have equal benefit of tertiary education.”<sup>93</sup> The second sentence in Article 24(5), which reads, “[T]o this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities,”<sup>94</sup> would no longer be needed. The second sentence of Article 24(5) is a qualifier that creates an escape for countries to get around including persons with ID. In the drafting of the convention, the reasonable accommodation language was a concern.<sup>95</sup> The concern was over the lack of clarity with respect to what a reasonable accommodation was and who would decide what was reasonable.<sup>96</sup> If the second sentence of Article 24(5) remains, some countries will inevitably interpret it similarly to the U.S.

¶42 Another potential remedy would be to do what the CRPD should have done in the first place. The CRPD should have taken a stand and included PSE in the same section as primary and secondary education in Article 24(2). Separating the postsecondary educational provision from the rest of the education provisions implies that there must be some difference between PSE and the other forms of education. To have two provisions

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<sup>92</sup> CRPD, *supra* note 1, art. 24(5).

<sup>93</sup> See Hart et al., *supra* note 46. (An idea of changing the language in disability laws in the United States was suggested in this newsletter. They suggested changing the language of the statutes to read that disabled persons should have equal “ability to benefit” from postsecondary education. This change would serve as the framework for PSE for persons with ID. This would be called the “ability to benefit test” and this framework would be used to analyze the merits of PSE opportunities for persons with ID. This would be a significant improvement from the “equal opportunity” language and would create access to PSE programs for persons with ID. This would likely solve many of the opportunity issues, but there still could be issues with clarity and inclusivity.).

<sup>94</sup> CRPD, *supra* note 1, art. 24(5).

<sup>95</sup> SCHULZE, *supra* note 61, at 35-36.

<sup>96</sup> *Id.*

that are the same instead of one would be superfluous. Separate provisions naturally imply separate treatment. Article 24(2), which currently provides for primary education and secondary education, could be amended to also include the listed forms of protected education in PSE. This would do away with the facial distinction between PSE and the other forms of education. Theoretically, if done correctly, there should be no difference between these two ways of changing the CRPD PSE provision. However, there is merit to the idea of including postsecondary education directly alongside primary and secondary education. It shows that a distinction between PSE and the other two forms of education no longer exists. No longer will PSE be thought of as a privilege or a luxury while primary and secondary education are regarded as a necessities. Now, PSE will be recognized alongside the other forms as a necessity for persons with ID in countries where PSE is a necessity for the rest of the population.

¶43 It might seem that it is too harsh of a requirement to include PSE along with primary and secondary education, because some countries do not have the economic means to implement a system that would allow for persons with ID to participate in PSE. However, as we have seen, Article 4(2) allows for countries to implement provisions as they become economically feasible.<sup>97</sup> It would not create a burden for countries that could not presently afford to provide PSE. Also, it will give these countries a roadmap for when they become more industrialized, and PSE becomes a necessity for the bulk of the workforce. Instead of waiting decades after PSE programs are commonplace for the rest of the population to implement PSE programs for persons with ID, they will be cognizant that as their country develops, their disability laws need to develop as well.

¶44 Another thing this will do is allow disabled persons to be included in the general population. When looking at the U.S., the model for PSE for disabled persons is developing on its own, separate from the PSE models for the general population. This has led to problems related to non-inclusiveness and lack of clarity as to what programs are available to everyone. Comparing primary and secondary education for disabled persons in the U.S. with PSE programs for disabled persons reveals a great divide. The primary and secondary programs are much more inclusive and information regarding the programs is much easier to obtain. At these levels, programs for persons with ID are designed to coexist in the same environment as the other students. Naturally, this makes such programs more inclusive. However, it also helps with the dissemination of information, and as a result, families are much more aware of what is available for their family members with ID.

¶45 Looking to the structure of American PSE models, it is hard to understand what options are available to people with IDs when they become adults. However, non-disabled high-school graduates do not seem to have this problem. That is because the information that is developed for the general population is more organized and the channels of communication are better. The majority is the priority, and if PSE models are developed separately for students with intellectual disabilities, there will continue to be problems with communication. Also, it is conceivable to imagine that programs for students without ID will continue to be developed at a faster rate than a program that is specific for a minority of persons. Lack of options could very well be a problem in other countries as PSE models are developed specifically for them (but likely at a slower rate).

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<sup>97</sup> CRPD, *supra* note 1, art. 4(2).

¶46 However, if states required PSE institutions that receive government funding or benefits to create programs for all persons, this would cure many of the current problems. A natural concern related to this is that persons with ID may not be able to pass the same classes and institutions will have to sacrifice their credibility or change their curriculum in order to accommodate persons with ID. This can be avoided by having programs that are separate from the universities' various degree programs. Some of the PSE models in the U.S. use a system similar to this, sometimes called a certificate program.<sup>98</sup> This allows disabled persons to be more fully included in the PSE experience without impacting the general curriculum.

¶47 By including students with ID alongside the rest of the students in PSE, many of the challenges are thus avoided. Parents will have a better understanding of what is available, because they will know that their child will have options available at the same place other children without IDs have options. Guidance counselors at high schools will receive information about these programs from the same people that they receive information about for programs for the general population of students. The communication is streamlined, and thus much more effective. Also, students with ID are included in the same experience as their fellow classmates, and the line that divides them becomes less clear, which allows for more of a sense of acceptance. This carries over into the workforce as well, and will lead to more inclusive communities in states with this model.

¶48 It is true that even with the suggested amendment to the CRPD, challenges to its effectiveness will still arise. Ultimately, there are interpretation and reservation issues with any human rights treaty. While this paper does not discuss the extent to which interpretation and reservation issues, along with many other challenges that these treaties face, affect the success of a treaty in reaching its goal, there is still a benefit in making the goals clear. This is true even when states "sneak" around to get out of doing what is necessary to meet a specific goal. When it is made clear what should be done, for instance with respect to PSE, the information is available for agents of change to see what the status quo should be. When a state is not upholding its end of the deal, then the agents of change in those communities will be able to point to this objective criteria when raising awareness and calling for change. Collapsing Article 24(5) into Article 24(2) will shine light on the issue of PSE opportunities for persons with ID. If industrialized states that have the economic means do not want to accommodate persons with ID into the PSE population, ultimately they would still be able to do so. However, they will not be able to reject accommodation in the shadows anymore.

## VII. CONCLUSION

¶49 The importance of persons with ID in industrialized nations being able to access PSE cannot be underestimated. With many jobs in industrialized nations requiring PSE training to be employable, persons with ID that do not have opportunities for PSE training are at a serious disadvantage. As a result of this, for example, persons with ID the U.S. have employment rates that are extremely low.<sup>99</sup> While the U.S. has attempted to

<sup>98</sup> See *New Postsecondary Education Options in Delaware for Students with Intellectual Disabilities*, UNIV. OF DEL. CTR. FOR DISABILITIES STUDIES, <http://www.udel.edu/cds/initiatives-adults-clsc.html>.

<sup>99</sup> Diament, *supra* note 56.

remedy this problem with the passage of the HEOA, there are still many issues facing the U.S. Namely, problems with a lack of PSE opportunities available to persons with ID, a lack of clarity concerning the details of the programs that are available, and a lack of an inclusive experience in the programs that are available.

¶50 The U.S. was a pioneer in the passage of disability laws. The ADA was passed over twenty years ago and was a major advancement in advocacy for the rights of disabled persons. The ADA has created substantial positive change in the U.S., but has also failed in some areas, including PSE opportunities for persons with ID. The U.S. has recognized this and has tried to right the ship with the passage of the HEOA. So far, there are issues with the application of the HEOA's resulting programs, but it represents yet another significant advancement in disability laws. Unfortunately, it took the U.S. years to realize that disabled persons with ID were not being provided for adequately under the ADA with respect to PSE opportunities.

¶51 The CRPD is very similar to the ADA. The CRPD was drafted to ensure the human rights afforded to others were also afforded to disabled persons. These rights of disabled persons should have already been acknowledged, but disabled persons are systematically overlooked by society. Often change is not effected for disabled persons until they have already been disadvantaged for quite some time. With ADA and the problems that the U.S. encountered as guideposts, the CRPD should have tweaked American disability laws to provide inclusive PSE opportunities for persons with ID. The CRPD should be amended to reflect these ideals.

¶52 The CRPD serves as a roadmap to countries with respect to disability laws and therefore must be comprehensive in its protections of disabled persons. Recognizing that as countries become more industrialized and PSE becomes vitally important, the CRPD should be included as an equal benefit basis for persons in those nations. Including this benefit places no burden on countries that cannot afford to provide these programs. However, once these countries are able to provide these benefits and the rest of the society receives them, they should be expected to provide them for persons with ID as well. The failure to include this requirement in the CRPD creates a danger that other countries may fall into the same trap that the U.S. did and fail to recognize the problem for many years.