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Special Education Law: Resources to Help You Advocate for Your Special Education Child

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Research Guides

Special Education Law: Resources to Help You Advocate for Your Special Education Child

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Overview

The rights of special needs individuals were originally defined and protected in the 1975 Education for All Handicapped Children Act (EAHCA), which required school districts to adopt specific educational services to provide equal educational opportunities for children with disabilities. In 1990 the EAHCA was renamed the Individuals with Disabilities Education Act (IDEA) and in 2004 the IDEA was amended and reauthorized as the Individuals with Disabilities Education Improvement Act (IDEIA). The IDEA and its predecessor are federal mandates. Therefore, in order for United States public school systems to recieve federal funding, they must comply with the IDEA and protect the rights of students with disabilities and ensure these students receive comprehensive educational programs and services.

The IDEA follows the spirit of the EAHCA and requires that public school districts provide students with qualifying disabilities a "free appropriate public education" (FAPE) in the "least restrictive environment" (LRE). It also provides for substantive and procedural protections for special education students and their parents. For instance, the IDEA provides specific guidance on how schools determine whether a student is eligible for special education, for how a students' individualized education plan (IEP) is developed, for determining whether the services and support proposed are appropriate, as well as other safeguards for involving parents in this process.

The thirty-five year old legislation governing the rights of special education students is still being interpreted by the Supreme Court today. Given that this is a federal mandate, money is often the crux of special education debate around the country. Congress determined that the federal government should provide 40% of special education funding and that the states should pick up the remainder of the cost, however, the federal government has never come close to funding 40% of special education. This creates inequities in the system; students in well-funded districts tend to benefit more from the IDEA than students in under-funded, lower-income districts. Another issue that presents itself under the IDEA is what exactly a "free appropriate public education" in the "least restrictive environment is." The United States Circuit Courts of Appeal struggle with these very important issues. One other recent "hot button" IDEA issue ruled on by the Supreme Court in 2007 was about *pro se* representation by parents in these suits. Many parents do not have the financial means to litigate IDEA cases on behalf of their child and without being able to litigate *pro se*, they would have no chance at all. These three issues, funding, definition of FAPE and LRE, as well as *pro se* litigation by parents, are discussed in the primary sources section of this guide.

Scope

Having a child with special needs is daunting at times. Educating a child with special needs is not only daunting, but overwhelming, given the complexity of federal guidelines, rules and regulations governing the rights of special education students. As a parent, you are your child's best and most important advocate. The purpose of this guide is to give parents of children with special needs as well as representatives of families with special needs children an overview of the federal law governing the education rights of special education students.

About the Author

Laurice Rutledge is a third-year law student at Georgia State University College of Law. Her younger brother was born with Down's Syndrome and she saw her mother educate herself and advocate fervently on behalf of her brother, ensuring he got the best and most appropriate education possible. Ms. Rutledge interned at a special education law firm in New Jersey for two summers. During her second year of law school she worked in Georgia State's Health Legal Services (HeLP) Clinic, and is familiar with the educational needs and challenges special education students and their parents face. Before attending law school Ms. Rutledge worked in Washington, D.C. as a health care litigation consultant. She has a B.A. degree in Public Policy from The College of William & Mary. For more information about this resource guide, please contact Professor Nancy Johnson via e-mail at njohnson@gsu.edu.

Key Terms

Due Process Hearing –This is a court-like review process governed by administrative laws. A due process hearing is one of the administrative remedies available to parents and school districts to resolve special education disputes. Hearings can be held on behalf of one student or may involve others, as in a class action. The due process hearing is presided over by a hearing officer whose decisions have the effect of law and are binding upon the parties participating in the hearing.

EAHCA – The *Education for All Handicapped Children Act*, enacted in 1975, required all public schools to accept federal funds to provide equal access to education for children with physical and mental disabilities.

FAPE – A *Free Appropriate Public Education* is the mandated right that special education students are educated in the way best suited to help them learn and excel.

IEP – An *Individualized Education Plan* describes the goals set for a special education student by his or her Child Study Team, during the school year, as well as any special support needed to help the student achieve these goals.

IDEA – The *Individuals with Disabilities Education Act* was the successor legislation to the EAHCA and mandates Public Schools to provide special education students with a free appropriate education in the least restrictive environment to help these students meet their unique needs *and* prepare them for further education, employment, and independent living.

IDEIA – The *Individuals with Disabilities Education Improvement Act*, reauthorized and amended the IDEA in 2004.

Inclusion – Means that students with disabilities are supported in chronologically age-appropriate general education classes in their home schools and receive the specialized instruction customized in their IEP's within the context of the core curriculum and general class activities.

LRE – The *Least Restrictive Environment* means that a student who has a disability should have the opportunity to be educated with his or her non-disabled peers, to the greatest extent possible.

Pro Se Legal Representation – Refers to the instance of a person representing himself or herself without a lawyer in a court proceeding.

Related Service – Defined by the regulations to the 1997 IDEA as "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education"

Special Education – Educational programs and assignments including, special classes and programs or services designed to develop the educational potential of children with disabilities.

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Primary Sources

Legislation

In 1975, Congress passed the Education for All Handicapped Children Act (EAHCA). This bill was reauthorized as the Individuals with Disabilities Education Act (IDEA) in 1990. The IDEA was amended in 1997, and reauthorized and amended again in 2004 as the Individuals with Disabilities Education Improvement Act (IDEIA). Essentially the EAHCA, the IDEA and the IDEIA are one and the same. Today, this legislation is commonly referred to as the IDEA (despite it being reauthorized as the IDEIA in 2004).

The full text of these bills, as well as additional information, can be found free of charge on the Library of Congress's THOMAS website.

Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142 (1975)

This was the original legislation. It had four purposes:

- "to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs"
- "to assure that the rights of children with disabilities and their parents . . . are protected"
- "to assist States and localities to provide for the education of all children with disabilities"
- "to assess and assure the effectiveness of efforts to educate all children with disabilities"

Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476 (1990)

This 1990 act amended the EAHCA and changed the name to the Individuals with Disabilities Education Act.

Individuals with Disabilities Education Act Amendments for 1997, Pub. L. No. 105-17 (1997)

The 1997 Congress reauthorized and amended the IDEA. The focus of these amendments was to ensure that students with disabilities receive a quality public education that emphasized student improvement. The amendments strengthened the role of teachers, alleviated teachers of unnecessary paperwork requirements and realigning the focus on teaching and learning, provided assistance for education agencies to address the cost of special education services, and encouraged parents and school administrators to work together on students goals.

Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446 (2004)

The 2004 IDEA amendments continued to refine the legislation. The biggest changes to the IDEA were to the: IEP process and requirements, the due process procedures, and the discipline procedures.

Legislative History

The following provides links to the THOMAS Library of Congress's website for the legislative history on the Individuals with Disabilities Act. Following the link to the Senate or House Bill that started each of the Acts, will link you to additional relevant history on each Act.

The following is the Legislative History for the Education for All Handicapped Act.

- S.6: This Senate bill sought to amend the Education of the Handicapped Act to provide educational assistance to all handicapped children.
- Senate Report: 094-168
- Latest Conference Report: 94-664
- Became Public Law on 11/29/1975

The Education for All Handicapped Act was amended and renamed the Individuals with Disabilities Education Act in 1990.

- S.1824: In 1990 the Senate introduced a bill to reauthorize the Education of the Handicapped Act.
- Senate Report: 101-204
- Latest Conference Report: 101-787
- Became Public Law on 10/30/1990

In 1997 the Individuals with Disabilities Education Act was amended.

- H.R. 5: This House bill amended and reauthorized the Individuals with Disabilities Education Act.
- House Report: 105-95

In 2004 the IDEA was amended and reauthorized as the Individuals with Disabilities Education Improvement Act.

- H.R. 1350: In 2004, the House introduced a bill to reauthorize and amend the Individuals with Disabilities Education Act.
- House Report: 108-77
- Latest Conference Report: 108-779

United States Code

The statutory provisions of the IDEA are found at 20 U.S.C. §§ 1400-1482 (2006). The United States Code can be accessed at no cost from the Cornell Legal Information Institute. Below are the most relevant provisions of the code by issue.

IDEA requires that special education students are entitled to:

(1) a “free appropriate public education,” (FAPE) which provides special education and related services without charge and at public expense to all children with disabilities; (20 U.S.C. § 1401(9)(A))

(2) be involved as parents and child in the educational decision–making process; (20 U.S.C. § 1414)

(3) be educated in the “least restrictive environment” (LRE) so as to maximize the child's opportunity to interact with non–disabled peers; (20 U.S.C. § 1412)

(4) have in place an “individualized education program” (IEP) that is individually tailored to meet the child's unique needs; (20 U.S.C. § 1414)

(5) procedural safeguards or due process in order to resolve disputes over special education services. (20 U.S.C. § 1415)

Standard for Services: 20 U.S.C. § 1414

The services and programs are required to meet the standards of the state educational agency and to be provided in accordance with a written, enforceable individualized education program (“IEP”) developed for the child by a multidisciplinary IEP team with parental involvement.

Definition of Child with a Disability: 20 U.S.C. §§ 1401, 1414

A child with a disability is a child who has been found to have at least one disability by an evaluation consistent with IDEA and who, because of that disability, “needs special education and related services,” even if the child is progressing from grade to grade.

Disability Determination Evaluation Process: 20 U.S.C. § 1414

The IDEA requires that the child be evaluated in all areas of suspected disability. (20 U.S.C. § 1414(a)(3)(B))

A parent of a child, a state agency, or a school district may begin the evaluation process to determine if a child has a qualifying disability. (20 U.S.C. §§ 1414(a)(1)(B))

Parental consent is required before the evaluation can take place. (20 U.S.C. § 1414(a)(1)(D))

Individualized Education Plan (IEP) Process: 20 U.S.C. §§ 1414–1415

The IDEA strictly mandates parental involvement throughout the development and implementation of a student's IEP. (20 U.S.C. § 1414(d)).

Parents are critical members of the "IEP Team," and the IDEA intends that parents and schools work together to ensure the adequacy of student services. Parents must, for example, be given written notice of any changes a school district proposes for their child's education program. (20 U.S.C. § 1415(b)(3))

When the parents and the school cannot agree on an IEP's terms, the parents have a specific right to appeal the school's proposed program through an administrative hearing, often referred to as a "due process" hearing. (20 U.S.C. § 1415(f))

Dissatisfied parents can request an impartial due process hearing to contest specific elements of an IEP, the denial of requested services, or any other objectionable aspects of a proposed. (20 U.S.C. § 1415(b)(6))

A hearing examiner is empowered to determine whether a proposed IEP satisfies the requirements of a FAPE, whether the changes requested by the parents will be granted, and whether specific relief, such as ordering private school placement, is appropriate. (20 U.S.C. § 1415(f)(3)(E))

Reimbursement to Parents Placing Special Education Student in Private School: 20 U.S.C. § 1412

If the parents of a child with a disability who had previously received special education and related services from the school district unilaterally place (make the decision on their own without consent of the public school)their child in a private school, the court may require the agency to reimburse the parents for the cost of the tuition if the court finds that the district failed to provide FAPE to the child. (20 U.S.C. § 1412(a)(10)(C)(ii))

Procedural Safeguards – Administrative and Judicial Remedies: 20 U.S.C. § 1415

When parents and school districts disagree "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" the IDEA provides any party advocating for the educational rights of a special education child to present a complaint. (20 U.S.C. § 1415(b)(6)(A))

IDEA provides specific procedural safeguards for these students and their parents. These procedural safeguards begin with administrative due process hearings and ultimately provide for these matters to be litigated if the parents are still unsatisfied with the school districts proposal. (20 U.S.C. § 1415(a)-(d))

Therefore, interpretation of, determination of the statutory intent behind the IDEA, and abilities to grant relief lies within the jurisdiction of the federal courts. (20 U.S.C. § 1415(i)(2)(C)(iii))

Attorneys Fees: 20 U.S.C. § 1415(i)(3)

The court may use its discretion to award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability; to a prevailing party that is a state or local education agency against a parent who files a frivolous or claim; or to a prevailing party that is a state or local education agency against a parent if the complaint was filed for an improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.

Regulations

The regulations interpreting the IDEA are promulgated by the United States Department of Education's Office of Special Education and Rehabilitative Services (OSERS). These regulations are codified at 34 C.F.R. Subt. B, Ch. III, Pt. 300. The text of the Code of Federal Regulations can be found at no cost on the Government Printing Office's GPO Access site.

State Eligibility

Free appropriate public education (FAPE): 34 C.F.R. § 300.101

Least Restrictive Environment (LRE): 34 C.F.R. §§ 300.114- 300.120

State Responsibility Regarding Children in Private Schools: 34 C.F.R. § 300.129

Children with Disabilities Enrolled by their Parents in Private School: 34 C.F.R. §§ 300.130- 300.144

Children with Disabilities Placed or Referred to Private Schools by Public Agencies: 34 C.F.R. §§ 300.145- 300.147

Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Parental Consent to Evaluations: 34 C.F.R. § 300.300

Evaluations and Reevaluations: 34 C.F.R. §§ 300.301-300.306

Additional Procedures for Identifying Children with Specific Learning Disabilities: 34 C.F.R. §§ 300.307-300.311

Individualized Education Programs (IEPs): 34 C.F.R. §§ 300.320-300.323

Development of IEP: 34 C.F.R. §§ 300.324-300.328

Procedural Safeguards

Due Process Procedures for Parents and Children: 34 C.F.R. §§ 300.500-300.520

Discipline Procedures: 34 C.F.R. §§ 300.530-300.537

Case Law

The following are the most important United States Supreme Court and Appellate Court decisions involving the IDEA from 1982 through the present. All of these decisions along with additional links, are available for free on Wrightslaw, a website which specializes in providing current and easy to understand information on special education law.

Supreme Court Cases

Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).

This was the first special education decision by the U. S. Supreme Court. It attempted to define a "free appropriate public education."

Irving Independent School District v. Amber Tatro, 468 U.S. 883 (1984).

The Supreme Court found that certain medical treatments, such as clean intermittent catheterization (CIC), are to be considered a related service under the EAHCA and therefore, schools are required to provide it.

Burlington School Committee v. Massachusetts Board of Education, 471 U. S. 359 (1985).

The *Burlington* decision sought to clarify a number of issues presented by the EAHCA including: procedural safeguards, parents' role in educational decision-making, tuition reimbursement for private placement, and a child's placement during disputes about FAPE.

Honig v. Doe, 484 U.S. 305 (1988).

The *Honig* decision addressed school discipline. The case was brought on behalf of emotionally disturbed children who had academic and social problems. The Court clarified the procedural issues designed to protect children from school officials, the applicability of "stay put" during placement disputes and held that schools shall not expel children for behaviors related to their handicaps.

Florence County School District Four v. Shannon Carter, 510 U.S. 7 (1993).

In a unanimous 9-0 decision, the Supreme Court found that if the public school fails to provide an appropriate education and the child receives an appropriate education in a private placement, the parents are entitled to be reimbursed for the child's education, even if the private school does not comply with state standards. This ruling opened the door to children with autism who receive ABA/Lovaas therapy.

Cedar Rapids v. Garret F., 526 U.S. 66 (1999).

In *Garret F.* the Supreme Court issued a favorable decision on behalf of child who needed related services to attend public school.

Schaffer v. Weast, 546 U.S. 49 (2005)

THe *Schaffer* decision is very important because it held that the burden of proof in a due process hearing that challenges an IEP, is placed on the party seeking relief. Therefore, if a parent is seeking relief, he or she must show that the current IEP is insufficient in order to prevail.

Arlington Central Sch. Dist. Bd of Ed v. Pearl and Theodore Murphy, 548 U.S. 291(2006).

In a 6-3 decision, the Supreme Court ruled that parents who succeed in a lawsuit on behalf of their special education child are not entitled to recover fees for services provided by experts in IDEA actions.

Winkelman v. Parma City School District, 550 U.S. 516 (2007).

In *Winkelman*, the Supreme Court ruled that parents may represent their children's interests in special education cases *pro se*, and are not required to hire a lawyer before going to court. The Court held that parents have legal rights under the IDEA and can pursue IDEA claims on their own behalf, although they are not licensed attorneys. *See* the *Law Review and Journal Articles* section of this Guide for more information on the *Winkelman* decision.

Board of Education of the City of New York v. Tom F., 552 U.S. 1 (2007).

In this case, the question before the Court was whether parents of a child who has never received special education from the public school district could obtain reimbursement for a unilateral (parents decision without consent of the school) private placement. The Supreme Court issued a split decision (4-4) in the case. Justice Kennedy recused himself. Since this was a split decision, it is applicable only in the Second Circuit (Connecticut, New York, and Vermont). A similar issue was addressed two years later in *Forest Grove School District v. T.A.* *See* the *Law Review and Journal Articles* section of this Guide for more information on the *Tom F.* and *Forest Grove* decisions.

Forest Grove School District v. T.A., 129 S.Ct. 2484 (2009).

In a 6-3 decision, the Supreme Court held that the IDEA allows reimbursement for private special education services, even when the child did not previously receive special education services from the public school. *See* the *Law Review and Journal Articles* section of this Guide for more information on the *Tom F.* and *Forest Grove* decisions.

Appellate Decisions

Amanda C. v. Clark County School District & Nevada Department of Education, 267 F.3d 877 (9th Cir. 2001).

This written decision discusses research about ABA/Lovaas treatment, describes purposes of the IDEA as well as IEPs and procedural safeguards. The court held that the district's failure to provide parents with evaluations adversely affected the parents' ability to make decisions which in turn damaged their child and was a violation of FAPE.

Polera v. Board of Education of Newburgh City School District, 288 F.3d 478 (2d Cir. 2002).

This was a case for damages under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). The court ruled that a disabled child must first exhaust administrative remedies under IDEA before bringing a damages claim. This decision also thoroughly discusses relief under the statutes, compensatory and punitive damages, the exhaustion requirement, and the futility exception.

L.B. and J.B. ex rel. K.B. v. Nebo UT School District, 379 F.3d 966 (10th Cir. 2004).

The parents of an autistic child were reimbursed for ABA therapy and private preschool which was considered to be the LRE.

Zachary Deal v. Hamilton County TN Board of Education, 392 F.3d 840 (6th Cir. 2004).

This is decision discusses a wide array of issues: standard of review, additional evidence, judicial notice, procedural & substantive IDEA violations, FAPE, educational benefit, predetermination of placement, and reimbursement.

J. S. v. Isle of Wight VA School Board, 402 F.3d 468 (4th Cir. 2005).

In *Isle of Wight* the Fifth Circuit held that money damages are not available under the IDEA because Congress intended special education students to pursue IDEA claims through remedial mechanisms in the IDEA statute.

School Board of Henrico County VA v. Z.P., 399 F.3d 298 (4th Cir. 2005).

In this case, parents of child with autism rejected traditional public school preschool program and requested tuition reimbursement for private program that utilized one-on-one ABA therapy. This court also discussed deference to hearing officers as a fact-finder and deference to professional educators.

A.K., ex rel J.K. and E.S., v. Alexandria City School Board, 484 F.3d 672 (4th Cir. 2007)

This decision affirmed policies served by the requirement of a formal written offer that creates "a clear record of the educational placement and other services offered to the parents." The Fourth Circuit held that the school district's "offer of an unspecified 'private day school' was essentially no offer at all.

Jarron Draper v. Atlanta Independent School System, 518 F.3d 1275 (11th Cir. 2008).

The Eleventh Circuit ordered Atlanta Independent School System to pay tuition and expenses at a private special education school for four years or until the child graduates from high school as prospective compensatory education because of the school's failure to provide him with FAPE over a period of many years.

J.P. v. School Board of Hanover County VA, 516 F.3d 254 (4th Cir. 2008).

In this case the Fourth Circuit reversed the District Court's decision which gave deference to a hearing officer's findings of fact. The Court of Appeals remanded the case back to the District Court to reconsider whether the IEP offered by the school provided a child with FAPE.

UPDATE: In December 2008, the U.S. District Court issued a new decision in *J.P. v. School Board of Hanover County VA* (E.D. VA 2008), found that the State Hearing Officer's "decision was not consistent with the record, that HCPS did not provide J.P. with a FAPE during the 2005-2006 school year, and that the parents were entitled to tuition reimbursement for their child's placement at a private special education school.

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Secondary Sources

Treatises

Treatises are an excellent way to get an overview on a legal topic. The treatises listed below are all available at Georgia State University's Law Library. If you prefer to purchase one of these treatises, just follow the "for purchase" links included at the end of each description.

Mark C. Weber, Special Education Law and Litigation Treatise (LRP Pubs. 3d ed. 2008).

> Mark C. Weber is on of the leading scholars in education law, and particularly in Special Education Law. This treatise provides guidance on particular legal questions through an evaluation of caselaw and other authoritative materials. The book's chapters address: statutory background; eligibility for special education; appropriate education; evaluation; individualized education programs; placement; free education; related services; least restrictive environment; Child Find and public notice requirements; early childhood and preschool programs; monitoring and complaints; student discipline; parental status and related issues; records; residency; state advisory panels; submissions of plans and receipt of funding; personnel development; due process procedure; and court proceedings--individual and systemic. Appendices provide the text for the Individuals with Disabilities Education Act, Code of Federal Regulations text concerning assistance to states for education of handicapped children, Code of Federal Regulations text concerning early intervention programs for infants and toddlers with disabilities, discussions of pertinent Supreme Court cases, and discussions of unpublished cases noted in the book. A table of cases and index are also provided. Available at Georgia State University's Law Library (call number - KF4210 .W4 2008) or for purchase from LRP Publications.

Mark C. Weber, Understanding Disability Law (Lexis-Nexis 2007).

> This treatise discusses important statutory and constitutional issues relating to disability discrimination. It is designed as a compact treatise for practicing lawyers and others looking for an analysis of the Fourteenth Amendment, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, the Fair Housing Act Amendments, and other laws, as they relate to controversial issues of disability rights. Available at Georgia State University's Law Library (call number - KF480.Z9 W43 2007 c.1) or for purchase from Lexis Nexis.

Laura Rothstein and Julia Rothstein, Disabilities and the Law (Thompson/West 4th ed. year).

> Refer to Chapter 2: Elementary and Secondary Education, Section III: Individuals with Disabilities Education Act. Specifically, §§ 2.7–2.52.
>
> This treatise, provides a comprehensive overview of the rights of persons with disabilities in primary, secondary, and higher education, employment, public accommodations and public services, housing, transportation, and health care. Available at Georgia State University's Law Library (call number KF480 .R67) or for purchase from West Publications.

Law Reviews and Periodicals

There are a plethora of Law Review and other Journal articles addressing the various aspects of the IDEA. Below are articles that address three of the most current issues presented by the IDEA.

Least Restrictive Environment (LRE): The IDEA requires that all students be educated in the “least restrictive environment.” However, the legislation does not define how a school district should determine whether a special education students’ placement is the least restrictive. Currently, there is a split amongst the United States Courts of Appeals about what factors should be used in determining the LRE. The following articles discuss this issue.

Theresa M. DeMonte, Comment, *Finding the Least Restrictive Environment for Preschoolers Under the IDEA: An Analysis and Proposed Framework*, 85 Wash. L. Rev. 157

(2010).

This comment discusses the language of the IDEA and asserts that its principles and purposes suggest that the LRE environment for a preschooler is where the student with a disability can learn from his or her non-disabled peers. It also provides the courts with a framework for determining the LRE for a preschooler.

Susan C. Bon, *Confronting the Special Education Inclusion Debate: A Proposal to Adopt New State-Wide LRE Guidelines*, 249 Educ. L. Rep. 1 (2009).

This article does an excellent job of setting up the LRE issue. It gives an overview of the IDEA and then goes on to define, explain, compare and contrast the current federal circuit court tests as to what defines the LRE. Lastly, it proposes a policy solution to the inconsistency amongst the circuits.

Ashley Oliver, *Should Special Education Have a Price Tag: A New Reasonableness Standard for Cost*, 83 Denv. U. L. Rev. 763 (2006).

This article discusses whether cost should be a factor in determining the most appropriate classroom placement for special education students.

Stacey Gordon, *Making Sense of the Inclusion Debate under IDEA*, 2006 BYU Educ. & L.J. 189 (2006).

This article explains that the determination of whether the best placement for a child with a disability is in a general classroom or a separate educational setting, educators should adhere to state regulations and the Code of Federal Regulations (CFR), which provides implementation rules to guide compliance with the IDEA.

Perry A. Zirkel, *The "Inclusion" Case Law: A Factor Analysis*, 127 Educ. L. Rep. 533 (1998).

This article, by a leading expert in education law, is an analytical analysis of the factors that courts apply in the LRE tests.

Special Education Funding for Private Placement: In 2007 and 2009 the Supreme Court heard two cases addressing the issue of whether parents who place their special education child in private schools because they are unsatisfied with their local public school are entitled to reimbursement under the IDEA. These articles discuss the 2007 *Board of Education of New York City v. Tom F.* and the 2009 *Forest Grove School District v. T.A.* decisions.

Emily Blumberg, *Forest Grove School District v. T.A.*, 45 Harv. C.R.-C.L. L. Rev. 163 (2010).

This article analyzes and discusses the impact of the *Forest Grove* decision, which held that reimbursement for private special education services is allowed, even when a child has not previously receive special education services from the public school.

Courtney Rachel Baron, *Lessons Learned from Forest Grove School District v. T.A.: How the Supreme Court Can Refine the Approach to Private School Tuition Reimbursement Under the IDEA*, 103 NW. U. L. Rev. Colloquy 522 (2009).

This article was written after the Supreme Court heard oral arguments on the *Forest Grove* decision but before the decision was published. It discusses the background of the case and the importance of Supreme Court jurisprudence on this issue.

Alexia M. Baiman, *Educating Special Education Students Who Have Only Attended Private Schools: After Tom F. Who is Left with the Bill?*, 71 Univ. Pitt. L. Rev. 121 (2009).

The *Tom F.* decision, did not actually address the private funding issue because Justice Kennedy recused himself. *Forest Grove* firmly established the rule for private funding reimbursement, but this article nonetheless explains why this was an important question that the Supreme Court needed to address.

Emily S. Rosenblum, Note, *Interpreting the 1997 Amendment to the IDEA: Did Congress Intend to Limit the Remedy of Private School Tuition Reimbursement for Disabled Children?*, 77 Fordham L. Rev. 2733 (2009).

This Note analyzes the language of the 1997 amendment to the IDEA and addresses whether Congress intended to limit the remedy of tuition reimbursement for parents who unilaterally place their disabled children in private school. It discusses whether the remedy of private school tuition reimbursement should be available to a disabled child who never previously received public school special education services.

Pro Se Representation: In 2007, the Supreme Court issued a decision in *Winkelman v. Parma City School District*. This decision was important because it allowed parents of special education students to represent their child *pro se* (without legal counsel) in IDEA litigation. The following articles discuss this decision and its implications.

Perry A. Zirkel, *The Problematic Progeny of Winkelman v. Parma City School District*, 248 Educ. L. Rep. 1 (2009).

This article analyzes the lower courts decisions since Winkelman.

Patricia C. Hagdorn , *Winkelman v. Parma City School District: A Major Victory For Parents or More Ambiguity?,* 39 Seton Hall L. Rev. 981 (2009)

This article analyzes the implications of the *Winkleman* decision.

Justin D. Kumpulanian, *Special Education/Civil Procedure – The Idea of Fairness: Allowing Parent-Attorneys to Recover their Attorney's Fees Under the Individuals with Disabilities Education Act*, 31 W. New Eng. L. Rev. 203 (2009).

This article ponders a question that presents itself as a result of the *Winkelman* decision – whether parents who represent their special education child, *pro se*, can collect attorneys' fees.

American Law Reports

American Law Reports (A.L.R.) are an excellent legal resource that provide an overview of legal doctrine and principles. Below are selected reports that analyze the IDEA and provide annotations to additional primary and secondary sources on the particular IDEA issue at hand. Georgia State University's Law Library has these reports available for reference.

Kurtis A. Kemper, *Construction and Application of Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 et. seq.*, 13 A.L.R. Fed. 2d 321 (2006).

Mr. Kemper analyzes the IDEA through a review of the United States Supreme Court decisions in the Act.

Kurtis A. Kemper, S*tatute of Limitations Applicable to, and Accrual of, Actions for Attorney's Fees Brought Under Individuals with Disabilities Education Act, § 615(i)(3)(B), as amended, 20 U.S.C.A. § 1415(i)(3)(B)*, 23 A.L.R. Fed. 2d 553 (2007).

Here, Mr. Kemper discusses the attorney fees provisions of the IDEA and explains when attorneys fees are awarded.

Kimberly J. Winbush, *Rights of Parents to Proceed Pro Se in Actions Under Individuals with Disabilities Education Act, 16 A.L.R. Fed. 2d 467* (2007).

Ms. Winbush discusses the rights of parents to appear *pro se* in a lawsuit under the IDEA.

Thomas Keefe, *Recovery of Witness and Consultant Fees Under Individuals With Disabilities Education Act*, 3 A.L.R. Fed. 2d 441 (2005).

Mr. Keefe discusses the recovery of witness and consultant fees for IDEA plaintiffs.

Brian L. Porto, Application of 20 U.S.C.A. § 1412(a)(5), *Least Restrictive Environment Provision of Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 et seq.*, 189 A.L.R. Fed. 297 (2003)

Mr. Porto discusses the definition of LRE as it has evolved through the case law.

Legal Encyclopedias

- Encyclopedia of Special Education : A Reference for the Education of Children, Adolescents, and Adults with Disabilities and Other Exceptional Individuals by Cecil R. Reynolds & Elaine Fletcher-Janzen
  Call Number: LC4007 .E53 2007
  ISBN: 0471678023
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1568558The Third Edition of the Encyclopedia of Special Education includes the latest information about new legislation and guidelines. In addition, this comprehensive resource features school psychology, neuropsychology, reviews of new tests and curricula that have been developed since publication of the second edition in 1999, and new biographies of important figures in special education. Unique in focus, the Encyclopedia of Special Education, Third Edition addresses issues of importance ranging from theory to practice and is a critical reference for researchers as well as those working in the special education field.
- 67B Am. Jur. 2d Schools §§ 403-430 by Janice Holben, J.D., Alan J. Jacobs, J.D., Jack K. Levin, J.D., & Jeffrey J. Shampo, J.D.American Jurisprudence is a legal encyclopedia published by West. This section gives an overview of the key provisions of the IDEA.

Books

The following books provide a good cross-section of the literature available on "how to" navigate the complex waters of the IDEA and special education law.

- Special Education Law by Laura Rothstein & Scott F. Johnson
  Call Number: KF4210 .R68 2010
  ISBN: 9781412967716
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1989017This book is designed to help familiarize individuals with the requirements of educating students with disabilities.
- Special Education Guidebook
  ISBN: 0314909192This book provides a first-line resource for addressing the complex legal issues arising in the area of special education compliance. It covers such topics as implementing the Individuals with Disabilities Education Act (IDEA), providing a free appropriate public education (FAPE), dealing with the "gifted" child, and addressing the legal considerations of home schooling. It also provides information on navigating the legal system and the role of special education law advocacy.
- Legal Aspects of Special Education by Kurt E. Hulett
  Call Number: KF4209.3 .H85 2009
  ISBN: 9780131173460
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1774208Legal Aspects of Special Education was written by a practitioner to help teachers, administrators, and advocates understand special education law in everyday language-without excessive legalese or extraneous case law. Readers will find both the opening interview with Joe Ballard, a pioneer of the IDEA movement, and the discussion of the history of special education and its link to the Civil Rights Movement–both fascinating features. Additionally, the book provides case studies and application questions, critical thinking questions, the most current information on the laws including No Child Left Behind and the Individuals with Disabilities Education Act of 2004, a discussion of Response-to-Intervention (RTI) and the implication of IDEA 2004 for school districts, and the major trends changing the laws including that of autism. Whether you're considering a text for a course in Special Education Law, Education Law, or Educational Administration, Hulett's Legal Aspects of Special Education will be the perfect resource for both instructors and students.
- The Law of Special Education and Non-Public Schools: Major Challenges in Meeting the Needs of Youth With Disabilities by Charles J. Russo, et al.
  Call Number: KF4220 .L39 2009
  ISBN: 9781607092391
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1992568This book provides an informed explanation of Section 504, the IDEA, their regulations, and the cases that they have generated. The book examines the substantive and procedural requirements that Section 504 of the Rehabilitation Act (Section 504) and the Individuals with Disabilities Education Act (IDEA) place on educators in non-public schools.
- Understanding Assessment in the Special Education Process by Roger Pierangelo & George Giuliani
  Call Number: LC4031 .P484 2008
  ISBN: 9781412917919
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1650113This handbook explains applicable federal regulations and clarifies the referral, assessment, and evaluation process that helps determine student eligibility for special education and related services.
- What Do I Do When: The Answer Book On Special Education Practice and Procedure by John Norlin
  Call Number: KF4209.3.Z9 G67 2009
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1928286The 5th edition of What Do I Do When: The Answer Book On Special Education provides straightforward information on IDEA requirements for school districts. The edition includes the 2008 changes to IDEA part B as well. This is a useful reference for attorneys as well as parents who are seeking to determine if a school district is complying with the IDEA.
- From Integration to Inclusion: A History of Special Education in the 20th Century by Margret A. Winzer
  Call Number: LC3981 .W585 2009
  ISBN: 1563683652

https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=2063011From Integration to Inclusion: A History of Special Education discusses how special education has evolved over the past forty years. It provides excellent insight for any one who is interested in the theory and development in this area of law.

Newsletters

Special Education Law Bulletin: Special education compliance is complex. This newsletter keeps keeps you up to date by detailing the most recent developments and issues as they arise. General topics addressed include: mainstreaming concerns, classroom management, private schools and special programs, tuition reimbursement, individuals with Disabilities Education Act (IDEA) compliance, Individualized Education Programs (IEPs), and discipline issues. Available for purchase from West.

Wrightslaw's "The Special Ed Advocate" Newsletter: The "Special Ed Advocate" is a free on-line newsletter that addresses legal and advocacy topics in special education. Follow this link to subscribe.

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Interest Groups and Associations

Federal Agencies

Office of Special Education and Rehabilitative Services (OSERS)

The Office of Special Education and Rehabilitative Services is under the umbrella of the U.S. Department of Education. OSERS provides support to parents and individuals, school districts, and states in three main areas: Special Education, Vocation Rehabilitation and Research.

Office of Special Education (OSEP)

The Office of Special Education is a branch the Office of Special Education and Rehabilitative Services. This office is dedicated to improving results for infants, toddlers, children and youth with disabilities ages birth through 21 by providing leadership and financial support to assist states and local districts.

Advocacy Groups

The following is a list of disability rights advocacy groups which provide general information on the rights of individuals with disabilities. The description of these sites has been taken directly from their website.

- The Advocacy Institute: The Advocacy Institute is a non-profit, tax-exempt organization dedicated to the development of products, projects and services that work to improve the lives of people with disabilities.
- Council of Parent Attorneys and Advocate: The Council of Parent Attorneys and Advocates, Inc. (COPAA) is an independent, nonprofit, §501(c)(3) tax-exempt organization of attorneys, advocates and parents. Our primary mission is to secure high quality educational services for children with disabilities.
- National Alliance on Mental Interest: For three decades, NAMI has established itself as the most formidable grassroots mental health advocacy organization in the country. Dedication, steadfast commitment and unceasing belief in NAMI's mission by grassroots advocates have produced profound changes. NAMI's greatest strength is the dedication of our grassroots leaders and members. We are the families, friends and individuals that serve to strengthen communities across the country.
- Autism Speaks: Autism Speaks was founded in February 2005 by Bob and Suzanne Wright, grandparents of a child with autism. Since then, Autism Speaks has grown into the nation's largest autism science and advocacy organization, dedicated to funding research into the causes, prevention, treatments and a cure for autism; increasing awareness of autism spectrum disorders; and advocating for the needs of individuals with autism and their families. We are proud of what we've been able to accomplish and look forward to continued successes in the years ahead.
- National Down Syndrome Society: The mission of the National Down Syndrome Society is to be the national advocate for the value, acceptance and inclusion of people with Down syndrome.

Blogs

Below is a list of selected special education law blogs. For a list and the links to 50 of the top blogs on special education visit OnlineUniversities.com - 50 Best Blogs for Special Ed Teachers.

- Special Education Law Blog: A special education legal resource discussing case law, news, practical advocacy advice, and developments in state and federal laws, statutes and regulations. Postings include insight and sometimes humor from Charles P. Fox, a Chicago, Illinois attorney who is also a parent of child with special needs, and other guest authors.
- About.com - Jerry's Special Education Blog: Written by Jerry Webster, this blog focuses on advice and tips for teaching special ed.
- Education Week's Blogs: Special Education: Education Week reporter Christina A. Samuels tracks news and trends of interest to the special education community, including administrators, teachers, and parents. Former Education Week special education reporter Lisa Fine is guest-blogging while Christina is on leave for the 2009-10 academic year.
- Wrightslaw's Blog - The Wrightslaw Way to Special Education Law and Advocacy: Provided by Wrightslaw.com which provides parents, educators, advocates, and attorneys with accurate, reliable information about special education law, education law, and advocacy for children with disabilities.

Additional Resources

The following websites are additional IDEA and Special Education resources.

- Wrightslaw: This is leading website on special education law and advocacy. It provides a comprehensive review of the IDEA, relevant case law and provides a myriad of other special education resources,including a newsletter and blog which are linked to in other sections of this guide. If you only look at one thing recommended by this guide, Wrightslaw should be it.
- National Resource Center on ADHD: Discusses the IDEA and relevant frequently asked questions as it pertains to AD/HD.
- National Center for Special Education Research: The National Center for Special Education Research (NCSER), sponsors a comprehensive program of special education research designed to expand the knowledge and understanding of infants, toddlers and children with disabilities

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