

CHAPTER 2

OVERVIEW OF LAW

There are four types of law: federal and state constitutions, statutes, administrative rules and regulations, and case law.

Constitutional Law

The United States Constitution outlines the structure of the federal government. All laws passed must agree with the principles and rights set forth in the Constitution. The first ten amendments to the Constitution are called the Bill of Rights. The Bill of Rights is the source of the most fundamental rights – freedom of speech and religion, right to a jury trial, protection against unreasonable searches and seizures. These Amendments were added to the Constitution to protect citizens against interference from the federal government.

Federal Statutes

Statutes are laws that are passed by federal, state and local legislatures. Federal statutes are passed by the United States Congress and signed into law by the President. Federal statutes are organized by subject, indexed, and published in the United States Code by Title number. Title 20 is about Education.

References to law are called **citations**. Legal citations are written in a standardized form describing exactly where the statute is located. Citations to federal statutes include the title for the U.S. Code and the section number.

The Individuals with Disabilities Education Act is a federal statute. The statute is in Title 20 of the United States Code, beginning at Section 1400. The legal citation is 20 U.S.C. § 1400, *et. seq.* § is legal shorthand for symbol and is made by two S's superimposed. The term "*et. seq.*" means at Section 1400 and continuing thereafter.

Section 504 of the Rehabilitation Act is a federal statute. Section 504 is in the Rehabilitation Act of 1973 which is codified in Title 29 of the United States Code at Section 794 and is cited as 29 U. S. C. § 794. "Congressional Findings and Purpose" are in Section 701. "Definitions" are in Section 705.

The Family Educational and Privacy Rights Act is a federal statute. The FERPA statute is in Title 20 of the United States Code at Section 1232.

Federal Regulations

The purpose of regulations is to clarify and explain the statute. Although regulations give force and effect to a statute, they must also be consistent with the statute. Regulations have the same power as the statute. An Appendix to a regulation is a part of a regulation and may or may not have the same force and effect as a regulation, depending on the context. Regulations are published in the Code of Federal Regulations or C.F.R. Before Regulations are published in the Code of Federal Regulations, they are published in the Federal Register (F.R.) which is issued daily.

Title 20 of the U. S. Code requires the U. S. Department of Education to develop and publish the IDEA regulations. The IDEA regulations are in Volume 34, Part 300 of the Code of Federal Regulations. The legal citation for the IDEA regulations is 34 C.F.R. §. The first IDEA regulation is "Purpose" which is at 300.1. The legal citation for "Purpose" is 34 C.F.R. § 300.1.

Appendix A is part of the special education regulations. Appendix A provides additional guidance about IEPs, the involvement of the child's parents, transition, and the child's participation in state and district-wide assessments of achievement in a Question and Answer format. In the former statute, the comparable regulation was Appendix C.

The Section 504 regulations are in Volume 34, Part 104 of the Code of Federal Regulations (C.F.R.). The legal citation for the Section 504 regulations is 34 C.F.R. §. The first Section 504 regulation is "Purpose" which is at 104.1. The legal citation for "Purpose" is 34 C.F.R. § 104.1.

The FERPA regulations are in Volume 34, Part 99 of the Code of Federal Regulations (C.F.R.). The legal citation for the FERPA regulations is 34 C.F.R. §. The first FERPA regulation is “To Which educational agencies or institutions do these regulations apply?” The legal citation for this regulation is 34 C.F.R. § 99.1.

State Law and Regulations

State constitutions establish the structure of state government. States must develop special education statutes and regulations that are consistent with the United States Code (U.S.C.) and the Code of Federal Regulations (C.F.R.). State statutes and regulations may provide more special education rights than the corresponding federal law but states may not take away rights that are provided by federal law.

Legislative Intent

Statutory and regulatory law are based on legislative intent. In many cases, the legal interpretation of a law, the meaning of a specific section, or the meaning of a particular word will be influenced by the use of “may” instead of “shall,” or even the location of a semicolon.

Sometimes, one word in a statute will lead to extensive litigation. In the area of special education law, the word “appropriate” has been litigated extensively. After more than twenty years of case law, “appropriate” has many interpretations that vary considerably from one set of facts to another.

Sometimes, members of Congress are unable to agree on the wording of a proposed statute. To keep a bill from dying in committee, the legislators will often agree to vague compromise wording. Because Courts must interpret the meaning of a word or phrase in the context of the statute, it is not surprising that courts often arrive at different conclusions.

When you read decisions by the U. S. Supreme Court, you will see that the Justices often include a discussion of legislative intent and legislative history in their decisions. Through this process, vague, ambiguous words and terms receive more precise legal definitions.

The legislative history of the Individuals with Disabilities Education Act is in the *United States Code Congressional and Administrative News 1975* beginning at page 1425 (U.S.C.C.A.N. 1975, p. 1425).

To learn about the purpose of Section 504, read “Congressional Findings and Purpose” in Section 701 (included in this book).

Judicial Interpretations

It is not unusual for one court to interpret a word, phrase, or code section differently from another court, even when facts are similar. This process leads to more interpretations and more litigation. Over time, a “majority rule” usually develops as courts agree on the same interpretation. A “minority rule” also develops.

If a clear majority rule does not develop, the legal issue will become more confusing and diverse. A U. S. Court of Appeals may issue a ruling in a case that controls the lower courts.

Sometimes, two or more U. S. Courts of Appeal issue rulings that are in direct conflict with each other. This is called a “split among circuits.” When a split occurs, Congress may amend the law or the U. S. Supreme Court may issue a decision that clarifies the issue. Legal issues that result in a “split among circuits” have the highest probability of being accepted for review by the U. S. Supreme Court.

Caselaw

Caselaw is the body of law that evolves in state and federal courts. Hearing decisions in special education cases can be appealed to state or federal court. Decisions issued by state court judges can be appealed to higher state courts. In most states, the highest state court is the state’s Supreme Court.

For example, a New York trial judge’s interpretation of the special education statute will be governed by earlier rulings by the Supreme Court of New York. However, New York state court judges are not bound by opinions issued by state court judges from other states.

Decisions by U. S. District Court judges can be appealed to the U. S. Court of Appeals for that geographical area. District Court judges are bound by interpretations and rulings from their Courts of Appeals. New York is in the Second Circuit. U. S. District Court judges in New York must follow rulings from the Second Circuit Court of Appeals. California is in the Ninth Circuit. U. S. District judges in California must follow rulings from the Ninth Circuit.

Interpretations of the federal statute by U. S. District Courts are binding on state court trial judges. However, decisions from a U. S. District Court in New York are not binding on state court or Federal court

judges in California. Decisions from a U. S. District Court in California are not binding on state or Federal judges in New York or other states.

When the U. S. Supreme Court issues a ruling, all state and federal courts must follow the ruling.

How Caselaw Evolves

Often, the facts of a case will cause the hearing officer, review officer, or judge to want to rule in one direction, even if this ruling is contrary to existing caselaw. In this situation, the decision-maker may find that the unique facts in this case create an exception to the general caselaw. These decisions cause the body of law to grow, expand, and change.

After the U. S. Supreme Court issues a ruling, Congress will sometimes enact a new law that has the effect of overruling the Supreme Court's decision. The new statute will become the law.

Different Interpretations

Law is always subject to different interpretations. Attorneys interpret the law differently, depending on their perspectives. Judges interpret the law differently. Most articles about special education law provide an overview of the statute. These interpretations of law are little more than one person's opinion. When you read the statute and the regulations, you will develop your interpretation of the law and the impact it is likely to have on you.

How to Research the Law

To learn about the law, you must study the statutes, regulations, and caselaw. When you have a question about a legal issue, read the statute about the issue, then read the regulation that discusses the issue. You should then re-read the statute and re-read the regulation.

You may need to read the comments about the regulation that are in the Federal Register. The Code of Federal Regulations does not include all the comments that are in the Federal Register.

Next, read the cases that have interpreted the issue. Read the earlier interpretations first, before you tackle more recent interpretations.

If the case was appealed, read the decision that was appealed and reversed, or appealed and affirmed. When you read the earlier law, you will see how the law is evolving.

For every position taken by one court that a legal issue is clear black letter law, you can be sure that another court has taken the opposite position while asserting that their ruling is black letter law.

Black is white, white is black. Truth is in shades of gray. This is the nature of law.

Recommended Reading

Elias, Stephen and Susan Levinkind. (1997) *Legal Research: How to Find and Understand the Law*. (Berkeley: Nolo Press)

Bergman, Paul and Sara J. Berman-Barrett. (1998) *Represent Yourself in Court : How to Prepare and Try a Winning Case*. (Berkeley, CA: Nolo Press)

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