

**William & Mary School of Law  
Special Education Law & Advocacy  
LAW 363-01 SPRING 2009  
Wednesday, April 29, 2009  
1:30 p.m. to 5:30 p.m. (4 hours)**

**BEGINNING OF EXAM:** Please insert your special Exam Code ID# in the top of each page and also on the top of each typed page of your essay questions.

**CONTENT & SCORING:** This exam consists of:

- 27 True-false and multiple choice questions worth **1.5 points each** for a total of **40.5 points**.
- 4 Short answer questions worth **5 points each** for a total of **20 points**.
- 3 Essay questions worth **10 points each** for a total of **30 points**.
- 1 Bell curve drawing worth **9.5 points**.

**TIME: 4 hours.** We recommend that you take 15 minutes to read the entire exam before beginning to answer the questions.

**RULES:** This is a **closed book exam** and no outside sources are permitted.

- \* For Questions 1-27, circle the correct answer on the exam.
- \* For Questions 28-31, write the answers on the exam.
- \* For Questions 32-34, (essay questions), type or write the answers. Upload your answers to the essay questions to Blackboard and submit printed answers. (see End of Exam instructions on the next page)
- \* Draw the bell curve on the last page of this exam.

Create a header for your typed pages with the exam name and your exam code number and page number (1 of X). As you take the exam, save often to your hard drive and to a CD or flash drive.

**LENGTH OF ANSWERS:**

**Typed:** Your answers to the 3 essay questions should be no longer than **3 pages each**. Answers should be double-spaced, 12-point Times New Roman, with 1" margins. Insert a page break at the end of each answer to an essay.

**Written:** Use one blue book for the 3 essay questions. Write on only one side of each page. You may use every line on a page. If you need to cross out a portion of an answer, you may use an equal amount of space on the back of the page.

**Penalty for Exceeding Length Limitations:** We will read and grade answers that exceed these limits in their entirety, but will reduce your total score by the percent that you exceed the allotted length.

**AMBIGUITIES & TYPOS:** If you identify what you believe to be an ambiguity or a typographical error on the exam, explain why you think the problem exists as the question is

stated. For ambiguities, cover all possible interpretations in your answer. For typos, answer the question as written, and as you believe it was meant to be written.

**END OF EXAM:** Upload your answers to the essay questions to Blackboard by 5:30 p.m.

Return the exam questions and answers and this cover sheet to the classroom by the appointed time. One or more boxes will be at the front of the classroom to receive these items.

After completion of the Exam and uploading to Blackboard, you have **90 minutes** to locate a printer at the law school and to print and submit your printed answers to the essay questions.

## Final Exam

### True - False Questions

Questions **1 to 27** have a value of **1.5** points each, for a possible total of **40.5 points**. Circle the correct answer.

- 01.** A child who advances steadily from grade to grade, without failing grades, cannot be classified as a child with a disability. **True / False**
- 02.** As a general rule, "Related Services" are usually provided in regular education settings.  
**True / False**
- 03.** As a general rule, "Supplementary Aids and Services" are only provided in regular education settings.  
**True / False**
- 04.** As a general rule, transportation, when required, is a "Related Service."  
**True / False**
- 05.** As a general rule, transportation, when required, is a "Supplementary Aid and Service."  
**True / False**
- 06.** A "Specific Learning Disability" does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.  
**True / False**
- 07.** If a State does not have a regulation about the timeline to complete an initial evaluation of a child to determine eligibility for receipt of special education, then, pursuant to IDEA 2004, the evaluation and determination of eligibility must be completed by a school district within 60 business days of receiving parental consent for the evaluation.  
**True / False**
- 08.** Under IDEA, parents are entitled to a copy of their child's IEP at no cost.  
**True / False**
- 09.** One of the main differences between IDEA 2004 and Section 504 is that an IDEA child with an IEP must be placed in special education classes, but a Section 504 child may remain in regular education classes.  
**True / False**
- 10.** A child with an IEP who receives services under IDEA has the same rights and privileges as a child with a Section 504 Plan.  
**True / False**
- 11.** A child with a Section 504 Plan has the same rights and privileges as a child with an IEP.

**True / False**

**12.** Under the No Child Left Behind Act, schools are required to test all children in math, science and reading every year in grades 3 through 8.

**True / False**

**13.** Under the McKinney-Vento Act, if a parent and school district disagree about the appropriate school placement, the child shall be placed immediately in the school desired by the parent.

**True / False**

**14.** Under FERPA, parents of a child with a disability are entitled to a copy of their child's records subject to payment of a reasonable fee to search, retrieve, and copy their child's records.

**True / False**

**15.** Under the McKinney-Vento Homeless Assistance Act, in the event of a disaster leading to an influx of hundreds or thousands of homeless children, a school district may create a separate school for children from one locality (i.e., New Orleans) and mandate that all New Orleans children be placed in that school, as long as transportation is provided to the children to and from their temporary place of abode.

**True / False**

### Multiple Choice Questions - Circle the Correct Answer

**16.** Once a child has been deemed eligible for special education services, a re-evaluation must be completed at least:

- a. Every year
- b. Every two years
- c. Every three years
- d. Every four years

**17.** After completion of an initial evaluation and determination of eligibility, an IEP must be in effect:

- a. within 30 days
- b. within 45 days
- c. within 60 days
- d. within a reasonable time subject to a State's own special education timelines.

**18.** After completion of an initial IEP Team meeting and development of an IEP, the special education services must be made available:

- a. within 30 days
- b. within 45 days
- c. within 60 days
- d. as soon as possible

**19.** If a parent requests a special education due process hearing against a school district, the school district must convene a resolution session in order to resolve the dispute:

- a. Only if the parents are not represented by counsel.
- b. Within 15 days of receiving notice of the parent's complaint.
- c. Unless a Resolution Session would "be futile."
- d. After the State has appointed an impartial mediator.

**20.** Under the McKinney-Vento Act, school districts shall make placement decisions:

- a. after consultation with the child's former school district
- b. in accordance with the comparable educational setting in the former district

- c. in the best interest of the child
  - d. in accordance with the school district's standard educational placement procedures.
21. Under NCLB, reading programs are to be:
- a. Phonetically based
  - b. Taught at the child's age level
  - c. Taught at the child's grade level
  - d. Research based
22. Under NCLB, the timeline for teaching a child to read fluently is by the end of the:
- a. Second grade
  - b. Third grade
  - c. Fourth grade
  - d. Sixth grade
23. In *Bd. Education v. Rowley*, the Supreme Court held that:
- a. A deaf child is entitled to tuition reimbursement for a special education school if her home school cannot provide a free appropriate public education.
  - b. The school must provide a deaf child with a hearing aid, cochlear implant or sign language interpreter if this is necessary for the child to learn.
  - c. Children with disabilities are entitled to a free appropriate public education that includes access to specialized instruction and related services that provide educational benefit.
  - d. Children with disabilities are entitled to a special education that maximizes their potential.
24. In *Burlington v. School Comm. v. Dept of Ed*, the Supreme Court held that:
- a. If the school does not provide a disabled child with an appropriate education, and the parent places the child in a private special education program where the child receives an appropriate education, the parents can be reimbursed for the costs of that program.
  - b. If parents withdraw their disabled child from a public school special education program and place the child in a private program, the parents cannot be reimbursed unless they give the school notice of their intent to request tuition reimbursement.
  - c. If parents withdraw their disabled child from a public school special education program, they may not be reimbursed for the child's tuition until after the child re-enrolls in the public school.
  - d. Parents may only receive reimbursement if they place their child in a private special education program in the state where they reside.
25. In *Florence Co. School District IV v. Shannon Carter*, the Supreme Court held that:
- a. Schools can avoid reimbursing parents for private programs by providing self-contained classes with highly qualified teachers and paraprofessionals.
  - b. Schools can avoid reimbursing parents for private programs by providing a free appropriate education in the public setting or by placing the child in an appropriate private program of their choice.
  - c. Schools are not required to reimburse parents who withdraw their disabled children from a public school program without giving the school notice that they are dissatisfied with that program.
  - d. When parents place their disabled child in residential programs, schools are not required to reimburse the parents for non-educational expenses.
26. In *Cedar Rapids v. Garret F.*, the Supreme Court held that:

- a. Schools must provide disabled children with a free appropriate public education in the least restrictive environment.
- b. Schools must provide a deaf child with a hearing aid, cochlear implant or sign language interpreter if these services are necessary for her to learn.
- c. Schools are not required to provide medical services, except for diagnostic and evaluation purposes.
- d. Schools must provide nursing services if these services are necessary for a disabled child to attend school and receive an education.

27. In *Schaffer v. Weast*, the Supreme Court held that:

- a. Parents are not entitled to reimbursement for tuition in a private program if the public school provided a free appropriate education in the least restrictive environment.
- b. The burden of proof in an administrative hearing challenging an IEP is on the party seeking relief.
- c. Policy considerations, convenience and fairness require that the burden of proof be assigned to the school district.
- d. As the party that prepared the IEP and has greater expertise and resources, the school district has the burden proving that an IEP is appropriate.

**Short Answer Questions**

Questions 28 to 31 have a value of 5 points each, for a possible total of 20 points. Please fill in the blanks.

28. The primary purpose of IDEA is to ensure that children with disabilities have available to them a free appropriate public education that . . . is designed to meet their \_\_\_\_\_ and prepare them for \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

29. The second purpose of the law is \_\_\_\_\_

30. The primary purpose of Section 504 of the Rehabilitation Act of 1973 is \_\_\_\_\_

31. The primary purpose of the Family Educational Rights and Privacy Act (FERPA) is \_\_\_\_\_

**Short Essay Questions**

Questions 32 to 34 have a value of 10 points each, for a possible total of 30 points. Your answers should be no longer than 3 pages for each question.

Answers to the essay questions should be uploaded to Blackboard and should be printed and submitted. Be sure to number each essay question, each page, and insert your Exam Code #, upper left corner of each page.

32. You received an email from a new client who has an appointment with you in two weeks. You are out of town. Your client just received notice of an IEP meeting. She does not want an IEP meeting to be held until after she meets with you. She emailed you with this question:

Is there anything in the law that prevents me from asking the school to postpone my child's annual IEP? The IEP meeting is scheduled five days from now. The current accommodations are not working or certain teachers are not implementing the accommodations. I would like to postpone the meeting until after I meet with you and also to have time to obtain some new test data and get some ideas about accommodations.

The special education caseworker said an IEP meeting, once scheduled, cannot be postponed! That seems ridiculous. Please help, what should I tell them. I don't want the school to know I am stalling until I meet with you.

You are reluctant to talk with the mother until after you review the child's file. Your secretary described the mother as a "talker" and said she will keep you on the phone for a long time. You will respond to her questions by email. Your answer to this question is the advice you gave the mother. Answer her questions and provide sound practical and legal advice for the short term.

**33.** Billy is 15 years old and in the eighth grade at Cook Corner Middle School. Billy has received special education services since the 3<sup>rd</sup> grade, when the school determined that he had specific learning disabilities and an Attention Deficit Hyperactivity Disorder (ADHD). The school retained Billy in 3<sup>rd</sup> grade, hoping that his developmental lag in reading would be reduced by another year's exposure to 3<sup>rd</sup> grade material.

Billy has had several psycho-educational evaluations. In 3<sup>rd</sup> grade, testing on the Dunstan Darr Reading Test determined that his reading comprehension was at the 1<sup>st</sup> grade level, evidenced by a standard score of 90. On the Wechsler Intelligence test, Billy had a Full Scale IQ of 115, with a Similarities subtest score of 16. Because of the discrepancy between his scores on the Dunstan Darr Reading Test and Wechsler IQ tests, Billy was found eligible for special ed services.

In 6<sup>th</sup> grade, Billy was re-evaluated. Three years after the first evaluation, his standard score in reading comprehension on the Dunstan Darr Reading Test dropped to 85.

Billy is now in the 8<sup>th</sup> grade. His teachers report that he is very moody. He shifts from being sullen and withdrawn, to belligerent and aggressive toward smaller classmates. He frequently complains of an upset stomach and headaches so he can stay home.

Billy's mother insisted that the school re-evaluate him. The school psychologist administered the Wechsler IQ test and the Dunstan Darr Reading Test again. On the Wechsler, Billy's IQ dropped to 90. His Similarities subtest score was 13. On the Dunstan Darr Reading Test, the psychologist noted that Billy made gains since the initial evaluation in 3<sup>rd</sup> grade. In 3<sup>rd</sup> grade, his reading grade equivalent score was at the 1<sup>st</sup> grade level. In this evaluation, his reading comprehension score increased to the 3.5 grade equivalent, (gain of 2.5 years) with a standard score of 70.

Billy's mother says the school personnel are pleased with his progress in reading, but they are baffled and concerned about the increase in behavior problems. The IEP team recommended that Billy's label be changed from "specific learning disability" to "emotional disturbance." They also want to change Billy's label so he can receive counseling for his emotional and behavioral problems.

Billy's mother asks for your advice. What do you recommend? Why?

Using percentile rank scores, where is Billy functioning as compared to his peers? How much progress has Billy made since he entered special ed?

**34.** Isabel is 13 years old. She has been diagnosed with specific learning disabilities and speech and language impairments including, but not limited to, dysarthria (a speech disorder) and dyslexia. She has neurological problems that cause weaknesses in non-verbal areas of cognitive functioning including visual-spatial reasoning. Isabel is also diagnosed with deficits in gross and fine motor skills and a growth hormone deficiency. These difficulties place her at risk for academic, social, and emotional problems.

From kindergarten through the 2006-07 school year, Isabel attended the Waldorf School, a private school in Baltimore City. From kindergarten through the 2006-07 school year, Isabel received speech and language therapy and occupational therapy that was paid for by her parents.

In August 2007, Isabel's parents, signed a tuition contract, paid the first quarter tuition, and enrolled their daughter in the Baltimore Lab School ("Lab School") for the 2007-08 school year. Isabel began attending the Lab School in September 2007.

In early October 2007, after Isabel began attending the Lab School, her parents were increasingly concerned about cost of the private school. The parents contacted the principal at Hampden Elementary, their neighborhood school, to discuss enrollment procedures for their daughter. On October 7, 2007, the parents hand delivered a letter to Hampden Elementary that included the required information for her enrollment, and three evaluations regarding Isabel's speech and learning disabilities and her need for occupational therapy.

After receiving the parents' letter on October 7, 2007, staff at Hampden Elementary School apparently misplaced the letter and did not take any action to determine eligibility or develop an Individualized Educational Program ("IEP") for Isabel. The parents did not follow up on their letter or contact the school until March 15, 2008 when they filed a request for a due process hearing. The parents asserted that the failure of Hampden Elementary and the school district to develop an IEP for Isabel constituted a denial of her right to a free appropriate public education ("FAPE") and, as a consequence, the parents were entitled to reimbursement for the tuition paid to the Lab School for the 2007-08 school year.

In response to the hearing request, the district searched for and found the misfiled October, 2007 letter. The district, stipulating that Isabel was eligible for services, immediately scheduled an initial IEP meeting to discuss program options available in the district. The special education staff asserted that they can provide Isabel with an appropriate education.

The parents refused to participate in the IEP meeting.

Their request for a due process hearing was timely filed. By agreement of the parents, hearing officer, and school board attorney, the hearing date was postponed beyond the 45-day limit until after the summer of 2008.

In September, 2008, you were retained by the parents. Since the child still attends the Lab School, you have amended the due process request notice to request tuition reimbursement from October 7, 2007 through the end of the 2008 - 2009 academic year.

The Hearing Officer extended the trial date until Spring, 2009 in order to permit both parties to obtain new evaluations and to permit both parties to conduct observations of both the Lab School and the proposed public school IEP program.

How will you prove your case. Explain the statutory and case law that you will use.

What defenses do you expect from the school board attorney? How will you refute these defenses?

### Bell Curve

The Bell Curve has a value of **9.5 points**.

On the back of this, the last page, place your paper in the horizontal landscape format and draw the bell curve. Label the mean, standard deviations, standard scores, subtest scores and percentile ranks.

\*\*\*\*\* A N S W E R S \*\*\*\*\*

Send your answers to questions 1 through 31 via email to [lawstudent |at| wrightslaw.com](mailto:lawstudent[at]wrightslaw.com) (replace the word "at" with @ ) and you will receive an immediate autoresponse email with the correct answers and a link to essay answers submitted by one of our law students. **In the alternative**, if you prefer, you may simply send a blank email to the above email address to receive the autoresponder with the correct answers.