

Introduction

If you are the parent of a child with a disability, you represent your child's interests. To effectively advocate for your child, you need to know about recent legal developments and decisions that may affect your child's educational program.

If you work as a teacher, related service provider, or administrator, you need to know about new developments in special education law.

If you are an attorney or advocate who assists children with disabilities and their families, you have a responsibility to be current on cases and other legal issues.

We wrote *Wrightslaw: Special Education Legal Developments and Cases 2016* to make it easier for you to stay up-to-date on new cases and legal developments.

Why You Need This Book

You need *Wrightslaw: Special Education Legal Developments and Cases 2016* because you want to know — or you need to know — about exciting new developments in special education law and advocacy. Exciting? Yes!

It's exciting when the Supreme Court of the United States (SCOTUS) agrees to decide two special education cases in one term, especially since the last case they decided was *Forest Grove v. T. A.*, 129 S. Ct. 2484 (2009).¹

Special Education News in 2016

Supreme Court Grants Certiorari in Two Cases

In 2016, the Supreme Court of the United States (SCOTUS) granted certiorari in two cases: *Fry v. Napoleon* (6th Circuit) and *Andrew F. v. Douglas School District RE-1* (10th Circuit). Decision in both cases were issued in early 2017. These cases are discussed in depth in Chapter 3.

Cases of the Year for 2016

Wrightslaw selected four exemplary cases as **2016 Cases of the Year**:

- *AG v. Paradise Valley Unified School District*, 815 F.3d 1195 (9th Cir. 2016)
- *Timothy O. v. Paso Robles Unified School District*, 822 F.3d 1105 (9th Cir. 2016)
- *LO v. NYC DOE*, 822 F.3d 95 (2nd Cir. 2016)
- *Cobb County Sch. Dist. v. DB* (11th Cir. 2016)

In Chapter 3, you will learn what makes these cases unique and earned them the distinction as **2016 Cases of the Year**. These cases are “must reads” for special education attorneys, advocates, and others who are interested in special education law.

¹ <http://www.wrightslaw.com/law/caselaw/ussupct.forest.grove.ta.pdf>

Special Education Legal Developments & Cases 2016

Key Decisions from the Courts of Appeals

Chapter 3 includes all key decisions in special education cases from the Courts of Appeals with a Table of Decisions that makes it easier to find relevant information.

Department of Justice Initiates Discrimination Cases

In 2016, the Department of Justice initiated and settled several cases about discrimination by YMCAs, a summer camp and a Montessori school.

The DOJ initiated a lawsuit against Georgia, *U. S. v. Georgia (GNETS)*, alleging that the state has discriminated against thousands of public school students with behavior-related disabilities by segregating them in separate unequal educational programs for years.

You will find information about these and other cases initiated and settled by the Department of Justice in Chapter 2.

Policy and Guidance from ED, OSERS, OSEP, and OCR

The Department of Education (ED), the Office of Special Education and Rehabilitative Services (OSERS), the Office of Special Education Programs (OSEP), and the Office for Civil Rights (OCR) issued “Dear Colleague” letters and policy guidance in several areas in 2016:

- Students with ADHD and Section 504
- Providing Behavioral Support in IEPs
- Discrimination Against Students with Disabilities
- Civil Rights of Students with Disabilities
- Restraint and Seclusion
- Rights of Students with Disabilities in Public Charter Schools Under Section 504 & IDEA

Wrightslaw: Special Education Legal Developments and Cases 2016 includes all Policy letters and Memos issued by the Office of Special Education and Rehabilitation Services (OSERS) and the Office of Special Education Programs (OSEP) in 2016.² These documents are useful when you want to know how the law is being interpreted by the Department of Education and the Office for Civil Rights, and when you need to educate school staff and administrators about their legal responsibilities.

If you advocate for children with disabilities, you need answers to these questions. For example:

When a parent is recording an IEP meeting, can school staff stop the recording because they believe the parent had an adequate opportunity to understand the meeting? (See OSEP Letter to Savit, p. 32)

Do parents have a right to open their due process hearing to selected individuals without opening the hearing to the public? Does the school have a legal right to object to the parent’s decision to open their due process hearing to the public? (See OSEP Letter to Michael Eig, p. 35)

After a school evaluates a child, the parent wants the child to be assessed in another area. Can the district evaluate that area before the parent can request an IEE? (See OSEP Letter to Carroll, p. 37)

Is the right to examine education records limited to parents of children who have been found eligible for special education services, or does the right extend to parents of children who are suspected of having disabilities? (See OSEP Letter to Nisha Kashyap, Esq., p. 37)

² OSEP Memos about grant applications, State Performance Plans (SPP) and Annual Performance Reports (APR) are not included in this book.

Although the Individuals with Disabilities Education Act was last reauthorized in 2004, the law continues to evolve. As you study the decisions, policy guidance, publications, and special education news in *Wrightslaw: Special Education Legal Developments and Cases 2016*, you'll realize how fast the law is evolving.

How This Book is Organized

Wrightslaw: Special Education Legal Developments and Cases 2016 is organized into four chapters.

Chapter 1 introduces legal terms and concepts. You learn about statutes, regulations, case law, judicial interpretations, and factors that cause law to evolve and change. This chapter includes an overview of the federal laws that govern the education of children with disabilities.

Chapter 2 focuses on special education legal news and developments. This chapter includes updates on lawsuits brought by the American Civil Liberties Union (ACLU) in school abuse cases and the newspaper series *Denied*, about how staff at a state Department of Education created a secret system to deny special education services to tens of thousands of qualified children with disabilities for over a decade.

Chapter 2 includes actions taken by the Department of Justice (DOJ) and guidance from Office of Special Education and Rehabilitation Services (OSERS) and Office of Special Education Programs (OSEP) in the form of "Dear Colleague" letters and memos.

Chapter 3 begins with a Table of Decisions by the Courts of Appeals. Decisions are in chronological order from January through December, 2016. The Table of Decisions includes the date, court, judge if known, and a synopsis of the legal issues. Each case in the Table of Decisions is linked to a summary of the case that includes the outcome and prevailing party. Whenever possible, the Court's words are used to describe the issues and rulings.

Chapter 4 is about Google Scholar, the free accessible search engine that indexes the full text of federal and state legal decisions. You will learn how to find the full text of decisions in your areas of interest.

If you have the e-book edition of *Wrightslaw: Special Education Legal Developments and Cases 2016*, we encourage you to use the "Search" and "Find" features. "Search" is a fast, easy way to find the information you need.

Wrightslaw: Special Education Legal Developments and Cases 2016 is a legal reference book. We recommend that you begin by reading the Introduction, Chapters 1, 2, and the Table of Decisions in Chapter 3. Skim the case summaries that follow the Table of Decisions. Next, read Chapter 4 and practice finding cases on Google Scholar.

After you finish the Google Scholar Tutorial, review the case summaries in Chapter 3.

In Summation

Now that you've finished the Introduction, you have a clearer sense of how this book is organized, what is included, and how you can get the most out of this book.

Let's move on to Chapter 1 about legal terms and the federal education laws that govern the education of children with disabilities.