

Introduction

In 1997, when we began our website, Wrightslaw.com, information about legal issues related to special education was hard to find. Subscriptions to legal journals were expensive.

In 1998, when we published our first book, *Wrightslaw: Special Education Law*, we hoped it would encourage more people to begin advocating for children with disabilities and that ordinary people would realize that special education law and advocacy isn't as complicated as it might appear. The success of that book was remarkable.

In 2006, as we wrote the introduction for the second edition of *Wrightslaw: Special Education Law, 2nd Ed.*, we marveled at the increasing demand for training in special education law and advocacy.

We have been touched by how many people still rely on our website and our books, now, more than 20 years after creation of our website and publication our first book, *Wrightslaw: Special Education Law*.

More parents, related service providers, educators, lay advocates and lawyers have people turned to advocacy as it became clear that many schools were failing to provide children with disabilities with a free appropriate education.

This shift may also be due to a greater awareness of the high price that families, children and society pay when schools fail to provide “a free appropriate public education” (FAPE) that emphasizes “special education and related services designed to meet their unique needs and **prepare them for further education, employment, and independent living.**”¹

Many attorneys and advocates initially entered this field as they advocated for their own child with special needs and experienced unexpected obstacles and challenges. Later, many then used their knowledge and experience to help other families.

In light of the increased interest in special education law and legal issues, we decided it was time to create a series of annual “year-in-review” books that focus on emerging caselaw from the Courts of Appeal. *Wrightslaw: Special Education Legal Developments and Cases 2019* is the fifth book in this series. In addition to the U.S. Supreme Court (SCOTUS), the landmark case law that changes the future is created in the U.S. Courts of Appeal.

Since 1997 and creation of our website, it has become much easier to find reliable information and cases. Google Scholar is a terrific tool, making legal research easier and free to all.

We hope these books will inspire a new generation of attorneys and advocates and be useful to seasoned veterans.

Why You Need This Book

If you are the parent of a child with a disability, you represent your child's interests. To be an effective ad-

¹ This is the purpose of the special education statute. See 20 USC § 1400(d). It is the mission statement of the Individuals with Disabilities Education Act (IDEA).

Wrightslaw: Special Education Legal Developments and Cases 2019

vocate, you need to know about recent legal developments and cases that may affect your child's right to a special education program that is appropriate for your child.

If you work as a teacher, related service provider, or school administrator, you need to be aware of new developments in special education law.

If you are an attorney or advocate for children with disabilities and their families, you have a responsibility to stay current on special education case law and other legal issues that affect children with disabilities and their families.

How this Book is Organized

Chapter One includes an overview of legal terms, concepts, and federal statutes related to children with disabilities and special education law. You will learn about the four types of law and about federal laws that govern the education of children with disabilities.

Chapter Two describes the legal process —the steps in resolving a special education dispute — from the initial request for a due process hearing through appeals to federal courts and the U.S. Supreme Court (SCOTUS).

In Chapter Three, you will learn to use Google Scholar as a tool to find cases relevant to your interests and needs.

Chapter Four is the Table of Cases from the Courts of Appeal in 2019. The Table of Cases lists all significant cases in 2019, with the date, court, issues, outcome, and a short summary. Each case is hyperlinked to a discussion of the case in Chapter 5.

Chapter Five includes discussions of all significant cases from the Courts of Appeal in 2019. In these discussions, we use text that is “copied and pasted” from the decisions. Chapter Five also includes a report from the Government Accounting Office to Congress and three U.S. District Court cases.

Strategies to Help You Develop Expertise in Special Education Law

To develop expertise in special education law, you need to read cases from the U.S. District Courts and U.S. Courts of Appeal. As you do this, you will want to look up the statute or regulation at issue and, if you have our law book, cross-reference the case. This is a long slow road, but you can't avoid it. You must read cases to understand legal issues, outcomes, and why a case is significant.

As you begin to educate yourself, you may be tempted to read articles about a case, instead of reading the actual case. When you read an article, you are reading the authors' words. An author's words often reflect that person's personal biases.

If you read **about** a case, you limit your understanding of the case. You need to read the Judges' words to understand the Court's reasoning for their decision. In *Wrightslaw: Special Education Legal Developments and Cases 2019*, we rely on direct quotes from the decisions – the Judges' words.

If you want to learn more about a case that is in this book, use Google Scholar to find the earlier District Court opinion that was appealed. Read that earlier decision and then, again, read the decision by the Court of Appeals.

To understand the law, you must take the hard road. Read original opinions several times. Do not rely on

Chapter 1 - Legal Concepts and Education Laws

the opinions and summaries of others. If you take these steps, you will develop expertise in special education law.

Learning from the past helps our understanding the evolutions of things and can also give insights into the future. (Link to source is here.)

To further develop your expertise in special education law and legal issues, we recommend that you begin with the first book in this series, ***Wrightslaw: Special Education Legal Developments and Cases 2015***.

As you read the ***Wrightslaw: Special Education Legal Developments and Cases*** books, you don't have to do a detailed analysis of each case. Skim and read the cases for enjoyment. You will quickly see that judicial writing styles vary. Some cases read like a novel, opening with a "hook" to get your interest and motivate you to read the case through to the end.

If you begin with ***Wrightslaw: Special Education Legal Developments and Cases 2015***, you will see splits between the Circuits developing on two issues that later were addressed by the U.S. Supreme Court (SCOTUS) in the ***Fry*** and ***Andrew F.*** cases in 2017.

As you progress to the third book, ***Wrightslaw: Special Education Legal Developments and Cases 2017***, you will read the decisions in ***Fry*** and ***Andrew F.*** and the transcripts of the remarks by Justice Kagan and Chief Justice Roberts.

These two unanimous pro-child decisions issued in early 2017 impacted numerous decisions the rest of that year and continuing through the present.

In ***Wrightslaw: Special Education Legal Developments and Cases 2017*** and ***Wrightslaw: Special Education Legal Developments and Cases 2018***, you will see how some Circuits quickly issued decisions that put them in accord with the decisions by SCOTUS.

For example, one week after SCOTUS issued their unanimous decision in ***Andrew F.***, the Ninth Circuit issued a decision in the ***Antelope Valley*** case, one of our all-time favorites. The Ninth Circuit used the word "potential" when discussing an Individualized Education Program (IEP) and determining if the school provided a free appropriate public education (FAPE) to the child. You must consider the child's potential.

Other Circuits distinguished their decisions by explaining that the SCOTUS decision did not apply to the present case because the facts in the present case were unique and the SCOTUS ruling was not applicable.

As you read ***Wrightslaw: Special Education Legal Developments and Cases 2019***, think about how a Court might rule on an issue. By learning the legal history of an issue, such as exhaustion, bullying, methodology, eligibility, etc., your ability to predict the outcome of future cases will be enhanced.

Sometimes you may hear someone complain about how special education law is always changing. Since 2004, there have only been a few changes in IDEA, the special education statute. Neither the statute nor the regulations are "always changing." However, new cases are issued regularly. For example, the important critical concept known as "compensatory education" that may impact COVID special education issues, has had major changes over several decades, even though that concept is not addressed in either the statute or regulations. It is strictly a creature of case law. See the compensatory education page on our website.

You may feel a sense of wonder as case law evolves and changes.

Strategies to Help You Use this Book

Hyperlinks

The e-book edition of *Wrightslaw: Special Education Legal Developments and Cases 2019* is an Adobe Portable Document File (PDF) with hyperlinks.

The first case in the Table of Cases (Chapter 4) and the Discussion of Cases (Chapter 5), is the January 3, 2019 decision by the Eighth Circuit - *Dougherty v. Palmyra*. **Click here for Chapter 4**, the Table of Cases and the *Dougherty* case and **click here for Chapter 5** and the discussion about the case.

As you move your cursor over a hyperlink, the **cursor will change its shape and become a hand** which means that those words are a hyperlink.

From the Table of Cases in Chapter 4, you can click on the *Dougherty* case name and you will then go directly to that case in this book in Chapter 5.

At the end of each case is a notation “**Return to Table of Cases**” which is also hyperlinked and will take you back to the Table of Cases.

Some URLs in the book are hyperlinks to other documents such as Federal Court Complaints, Jury Instructions, and Pleadings located on our www.wrightslaw.com website.

Search/ Find Feature

If you are looking for a specific case or concept, use the “Search/Find” feature in this e-book. To activate the Search/Find feature, press your “Control” or “Command” button and the letter “f” so a dialogue box pops up. The “Search/Find” feature is a fast, easy way to find information you need.

Index

The page numbers in the Index at the end of this book are hyperlinked to the referenced page. This **Index is atypical** because the page reference number does not take you to the indexed word in the case, but instead to **the beginning of the case** that contains that indexed entry.

In Summation

In the Introduction, you learned how *Wrightslaw: Special Education Legal Developments and Cases 2019* is organized and strategies to help you use this book.

You learned how you can develop expertise in special education law by reading cases from the U.S. District Courts and Courts of Appeal and how the books from the *Wrightslaw: Special Education Legal Developments and Cases* series can help in your quest.

It's time to move on to Chapter 1.