

CHAPTER 1

WHY THIS BOOK?

Special education law is complicated and confusing. What does the law say about evaluations and reevaluations, test procedures, and eligibility decisions? What does the law say about Individualized Educational Programs (IEPs) and IEP teams? Goals, objectives and benchmarks? Transition plans? Least restrictive environment and inclusion?

What does the law say about discipline? Positive behavioral intervention plans and interim alternative placements? Manifestation Review Hearings?

What does the law say about educational progress? Tuition reimbursement and parent notice? Independent educational evaluations? Mediation?

Wrightslaw: Special Education Law will help you find the answers to your questions in the statutes, regulations, and caselaw.

Who Should Read This Book

If you are the parent of a child with a disability, you represent your child's interests in securing an appropriate special education program. To be an effective advocate for your child, you need to understand your rights and responsibilities under the special education laws.

If you are like most **teachers** and **service providers** to children with disabilities, you have received confusing and conflicting information about the special education laws. This information may be inaccurate or incomplete. If you work in the field of education, you need to know what the laws say.

If you are an **attorney or advocate** who represents children with disabilities, you need the statutes, regulations and landmark Supreme Court cases close at hand. In **Wrightslaw: Special Education Law**, your main legal references are in one volume.

Law evolves and changes, regardless of the statute and regulations. Congress may pass a new bill tomorrow that changes a portion of the law. A judicial interpretation that is accepted today will change tomorrow, next week, or next year after a legal precedent or conflicting statute. **This is the nature of law.**

Who Are "Special Education" Children?

More than five million children receive special education services under the Individuals with Disabilities Education Act (IDEA). Who are these children?

The largest group - about 2.5 million children - have learning disabilities. Other children have speech/language disorders, communication disorders, autistic spectrum disorders, non-verbal learning disabilities, and attention deficit disorders. Some children have visual impairments, hearing impairments, mobility problems, cerebral palsy, brain injuries and mental retardation.

Millions more handicapped children are protected from discrimination by Section 504 of the Rehabilitation Act.

In 1997, the Individuals with Disabilities Education Act was reauthorized. During the reauthorization process, Congress received research about special education outcomes. Congress found that special education "has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." (See 20 U.S.C. 1400(c)(4))

Congress concluded that special education should be made more effective by "having high expectations for such children and ensuring their access to the general curriculum to the maximum extent possible." Congress strengthened the role of parents and urged school districts to use "prereferral interventions instead of waiting until children fail or are labeled." (See 20 U.S.C. 1400 (c))

How This Book is Organized

Wrightslaw: Special Education Law is organized into five sections. **Section One** focuses on **law and special education law**. In Chapter 1, you learn how this book is organized. Chapter 2 includes a review of law and

explains the process of legal change. Chapter 3 includes a brief history of public education, special education, and early education law from *Brown v. Board of Education to Public Law 94-142*.

Section Two is about special education and the Individuals with Disabilities Education Act. Chapter 4 contains an overview of the **Individuals with Disabilities Education Act of 1997**. In Chapter 5, you'll find the full text of the **Individuals with Disabilities Education Act of 1997**, a comprehensive analysis of the statute, and suggestions about how to secure appropriate services for the child. Chapter 6 includes the IDEA regulations including the new Appendix A.

Section Three is about **civil rights and discrimination** as it relates to handicapped children. Handicapped children are entitled to protection from discrimination under the civil rights statutes. Chapter 7 includes an overview of **Section 504 of the Rehabilitation Act**. In Chapter 8, you'll find pertinent text from Section 504 of the Rehabilitation Act. The implementing regulations for Section 504 are in Chapter 9.

Section Four is about **records and confidentiality**. The privacy of educational records is governed by the **Family Educational Records Privacy Act (FERPA)**. Under FERPA, schools must honor parental requests to inspect and review their child's educational records within strict timelines. Chapter 10 contains an overview of FERPA. Chapter 11 includes the text of the FERPA statute. The FERPA regulations are in Chapter 12.

Section Five is about **caselaw**. Chapter 13 is an overview of special education decisions by the United States Supreme Court. Chapter 14 is a casebook that includes the landmark Supreme Court decisions in *Rowley* (1982), *Burlington* (1985), *Honig* (1988), *Carter* (1993), and *Cedar Rapids* (1999).

Tips To Help You Use This Book

The statutes and regulations in this book are set in Garamond Book font. Wrightslaw's explanations, analyses, and tips that are in Helvetica font and preceded by a large arrow like this ➡ are **not** part of the statute. We used **bold type** to emphasize certain words and phrases in the statute. Look at the example below. The statute begins with **(A) In General**. The explanation begins with ➡ **IDEA AND FAPE**.

(A) In General - The term 'child with a disability' means a child-

- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) **who, by reason thereof, needs special education and related services.**

➡ IDEA AND FAPE

IDEA confers a right to a free appropriate public education (FAPE). The IDEA child is entitled to an IEP [as described in 20 U.S.C. §1414(d)] and special education that confers educational benefit. All children with disabilities are protected under Section 504. It is important for parents to understand that if their child does not receive services under IDEA, the child does not have IDEA procedural protections.

References

When references to other works are cited, the full bibliographic citation is at the end of the chapter.

Contact Us

What did you like about **Wrightslaw: Special Education Law**? What did you dislike about **Wrightslaw: Special Education Law**? How can we improve this book so it meets your needs? Send your ideas, thoughts and comments about how we can improve **Wrightslaw: Special Education Law** to: **Harbor House Law Press**, P. O. Box 480, Hartfield VA 23071. (877) 529-4332 or (877) LAW-IDEA