

Wrightslaw: Special Education Law and Advocacy

May 22, 2025

ASK Childhood Cancer Foundation
askccf.org

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www.wrightslaw.com
Harbor House Law Press, Inc.



ASK



Assistance, Support and Kindness since 1975

askccf.org



Print and PDF Books for Attendees

Special Education Law
From Emotions to Advocacy
All About IEPs

Until Thursday, May 29, 2025 the adobe.pdf
versions are available to you as a download, in a
password protected subdirectory at:

<https://www.wrightslaw.com/2025ask/>

You must use the username and password of
ask

The books are copyright protected, for your use and
are sold in our online store. Please do not distribute
them.



Being Firehosed

- A high-speed, high-pressure, sweeping
run through several laws
- IDEA, Section 504, ADA
- Not a detailed analysis
- But, you will know where to look for an
understanding of what the law says,
yourself, rather than simply relying on
the opinion of another, right or wrong.



The Show . . .

Goes from a high-speed race to a trot, a crawl, and a dawdle – but it's in ***Wrightslaw: Special Education Law, Wrightslaw: From Emotions to Advocacy, Wrightslaw: All About IEPs***, and the files posted in 2025ask.

This training includes book highlights and info from the above resources. **You don't have to copy slides.** Just sit back and enjoy the training. I'll tell you when you need to write something down.

By tomorrow, these slides and the quizzes will be posted in the **2025ask** directory.

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Taking Notes? Copying Slides

You do not need to take notes.

- Today, you will do some writing and highlighting with your magic pen!
- If you take notes, six months from now, when something happens, and you remember that I talked about it, and you go to find your notes – GONE – you cannot find them.
- Consider taking your notes in the back of your law book. You will not lose that book.

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First, before looking at the Law

My approach with parents

Empowerment – don't do for them, teach them how to do

Answer legal questions or teach them how to answer their own legal questions. Teach them how to go fishing and catch fish. Takes longer, but saves time in the end.

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Overview

For the law book and Year in Review caselaw books, I have read thousands of cases, often going back to the original decision and legal briefs.

FINDING? From my own cases and those I've read - Schools don't win cases, parents lose them.

WHY? Because parent's emotions interfere with effective advocacy.

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Read your own initial emotional response

- How does the parent present to you, to others?
- Do they need to develop a new persona?
- Do you want to step in and fix?
- Ms. Manners, Peter Falk/Columbo
- Role playing
- Empowerment - do for and provide them with a fish, or teach the parent how to fish


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Emotional Interference From Emotions to Advocacy

In my active practice, my parents came in to see me, furious, scared, out for blood, that was usual.

Shift – Ms. Manners, Peter Falk / Columbo, Mother Teresa

New image – marketing and sales, persuasion. **Two books to be read by you and your parents!** 

Books

Getting To Yes How to Argue and Win Every Time

My parents and my law students had to read both books. I drilled and tested them on it!

You should too! These two books will have a profound impact on you and your ability to negotiate and change the emotions of the other, thus their beliefs, and their position!


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Persuasion - Getting To Yes How to Argue and Win Every Time

Learning how opposition thinks and feels.

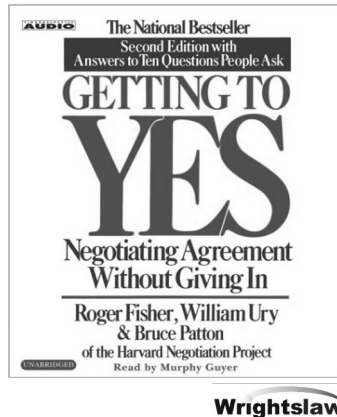
Parent learns how to tell a narrative story in chronological order with visual imagery that creates empathy.


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Your Role as a Negotiator & Problem Solver

You negotiate every day - with spouse, kids, boss, co-workers, neighbors, friends -- and the school

You negotiate for Special Education Services!



How to Argue and Win Every Time



Gerry Spence - greatest trial lawyer alive today. Persuasion - telling a story with visual imagery impacts emotions.

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Gerry Spence

"Gerry Spence is widely considered one of the most successful trial and criminal attorneys in America. He has never once lost a criminal case — either as a prosecutor or a defense attorney — and he hasn't lost a civil case since 1969."

https://en.wikipedia.org/wiki/Gerry_Spence

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Key to Success

Empathy from the person with power.

Documentation – Letter to the Stranger tells the story.

If not in writing, it was never said.

And that and much more is in your FETA book.

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Pete's Story

School records
Washington DC
public schools.

Parents

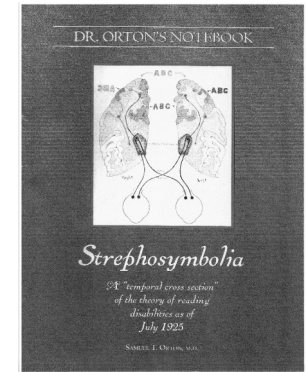
Diana Hanbury King



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Strephosymbolia

On July 25, 1925, Dr. Samuel T. Orton presented a paper titled "Word Blindness in School Children," at the annual meeting of the American Neurological Association. Medically, he identified "Word Blindness" as Strephosymbolia



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Samuel T. Orton

Reprint from February, 1929, The Journal of Educational Psychology.

THE "SIGHT READING" METHOD OF TEACHING READING,
AS A SOURCE OF READING DISABILITY

SAMUEL T. ORTON, A.M. M.D.

New York City

A few years later, in 1929, Dr. Orton presented a paper noting in essence that "Sight Reading" aka, "Whole Language" **damages** children with Strephosymbolia, i.e., dyslexia.

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Three Generations of Dyslexia at the U. S. Supreme Court October 6, 1993

This article was originally published in the Winter 1994 issue of Perspectives, the Journal of the Orton Dyslexia Society, now known as the International Dyslexia Association.

<https://www.wrightslaw.com/advoc/articles/orton.html>

See also "The Untold Story" –

<https://www.wrightslaw.com/advoc/articles/orton.html>

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Quiz – IDEA Baseline Data

- Memory – lose 90% in 23 hours
- Repetition!
- Test & Re-test
- Quiz



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Quiz – Section 504

- Memory – lose 90% in 23 hours
- Repetition!
- Test & Re-test
- Quiz



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Quizzes + Answers IDEA + Section 504

Both quizzes and the answer sheets are located in the password subdirectory:

www.wrightslaw.com/2025/ask/

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Now the Law Early History Special Education

NOTE: To understand legal concepts, you MUST first understand the history of that issue.

History Lesson First

Expulsions

Uneducable

Financially unable to educate

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Expulsion, for having CP

In ordering the exclusion of a child from public school, the Court held that:

"the very sight of a child with cerebral palsy will produce a depressing and nauseating effect upon others." *Beattie v. Board of Ed. of Antigo*, 169 Wis. 231, 232, 172 N. W. 153 (1919)

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1927 US Supreme Court Involuntary Sterilization

"It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. . . Three generations of imbeciles are enough."

Justice Oliver Wendell Holmes - *Buck v. Bell*, 274 U. S. 200 (1927)

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***PARC v. Com. of Pennsylvania* 1971, 1972**

"The exclusions of retarded children complained of are based upon:

(1) Sec. 13-1375 relieves the State Board of Education from any obligation to educate a child whom a public school psychologist certifies as uneducable and untrainable.

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PARC

"Expert testimony in this action indicates that all mentally retarded persons are capable of benefiting from a program of education and training; that the greatest number of retarded persons, given such education and training, are capable of achieving self-sufficiency, and the remaining few,

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PARC

with such education and training, are capable of achieving some degree of self-care; that the earlier such education and training begins, the more thoroughly and the more efficiently a mentally retarded person will benefit from it; and, whether begun early or not, that a mentally retarded person can benefit at any point in his life and development from a program of education and training."


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***Mills v. Wash DC Pub. Schs.* 1971, 1972**

Children with disabilities in the D.C. Junior Village not eligible for public school education.

"Inadequate funding cannot be permitted to bear more heavily on the child with a disability."


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Mills v. Wash DC Pub. Schs.

Remember this quote – very powerful!

"Inadequate funding cannot be permitted to bear more heavily on the child with a disability."


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Special Education Laws

Individuals with Disabilities Education Act (IDEA)
Section 504 of the Rehabilitation Act
Americans with Disabilities Act (ADA)

State Regulations

The US Code and the Code of Federal Regulations permit some state regs to vary from federal law, usually if they broaden the rights of the parents and child, or provide specificity re procedures.

They may not take away rights.


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Public Law 94-142 aka Education for All Handicapped Children Act of 1975

- Early cases related to eligibility, identification, definition of the word "appropriate."
- In the early 1980's, children in Virginia with autism were not eligible for special ed, because it was a medical condition.
- Decision was upheld by a U. S. District Court.
- Later, Congress added autism to the statute.

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Frequent Disputes and Issues

Eligibility for an IEP or Section 504 Plan
Individualized Educational Program (IEP)
FAPE v. Best
Child's Potential
Maximize Performance
Discipline
Emotions—Disputes Become Polarized

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Section 600 of the Act v Section 1400 of US Code

As "The Act" was going through Congress, the numbers of the sections were different. For example, Section 614 of "The Act" is the IEP statute. When "The Act" was signed by the President and became law, it was copied and pasted into the US Code, the numbers changed, and the IEP statute is 20 U.S.C. §1414(d).

Use the US Code sections and not the sections of the Act.

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Law Federal + State Statutes and Regulations and The Supremacy Clause

What controls, what is most powerful when federal and state law conflict? Which prevails, federal law or state law?

Answer: Most powerful is the U. S. Constitution. When federal and state law conflict, the federal law prevails pursuant to the "Supremacy Clause" of the U.S. Constitution. (Law book, page 435)

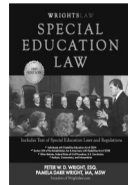
A federal reg and a state statute and state reg are always subservient to the federal law, the United States Code (USC)! Thus, always learn and understand the USC first!

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Law Book, 3rd Edition

Includes IDEA statutes and regs, Section 504 statute and regs, and ADA statute and regs, FERPA, McKinney-Vento, and related statutes.
Hyperlinks

Page 5 Table of Contents
Page 12 Selected Topics
Page 13 URLs / Embedded Hyperlinks

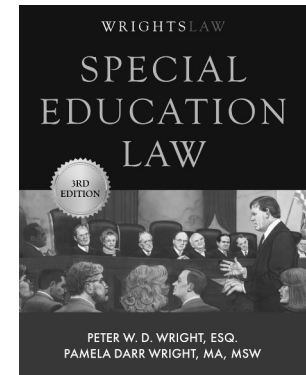


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Using Your Pen and Highlighter

Turn to the Table of Contents

An overview of the book by Sections & Chapters



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IDEA 2004 United States Code 20 U. S. C. §1400, et seq.

- Turn to page 85 in Chapter 5
- Table of Statutes

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IDEA Table / page 85 insert page numbers adjacent to each citation

§1400 page 88

§1401 page 91

§1412 page 113

§1414 page 135

§1415 page 151

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The Law - IDEA 2004 20 U.S.C. §1400-§1415 Five Key Statutes

- §1400 - Findings + Purpose
 - §1401 - Definitions
 - §1412 - FAPE, Child Find, LRE
 - §1414 - Initial evals, eligibility,
re-evals, IEPs
 - §1415 - Rules of Procedure, IEE,
due process hearings, discipline
- (Note – **Hyperlinked** table for pdf version is on page 87)

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IDEA 2004 Table of Regulations 34 CFR Part 300

- Turn to page 229 and 230 in Chapter 6
- Table of Regulations

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Code of Federal Regulations 34 CFR Part 300

* Highlight

- §300.8 – Child with a Disability (p. 230)
- §300.11 – Day
- §300.34 – Related Services
- §300.39 – Special Education
- §300.42 – Supplementary Aids + Services
- §300.111 – Child Find
- §300.320-328 – IEPs/Development (p. 232)

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The Eagle Soars – Find Answers Fast



Overview of IDEA

- 20 U.S.C. §1400
- 20 U.S.C. §1401
- 20 U.S.C. §1412
- 20 U.S.C. §1414
- 20 U.S.C. §1415

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Skim, a high speed run

For IDEA, §504, and the ADA, we will be doing a high-speed run through the statutes and highlighting subsections in the U.S. Code.

Later, in the future, when you are trying to find the answer to a legal question, review the statute, then the reg, then the Commentary, then your state laws, **in that order**. Then look at cases.



Cross-reference

As you look at a statute, a regulation, trying to find answers, on your print copy, write notes to yourself in the margins and cross reference to the USC, the federal reg (CFR) and state statute and/or reg in your law book. Put page numbers with your cross-reference.

Later, you will want to be able to find that info quickly.



Cross-referencing law

Again, federal law rules, it is supreme. While states cannot take away a right provided by the federal law, states may provide more details and more specificity. Frequently the state law, (whether a statute or reg), is a copy/paste of the federal law.

The spec ed law in each state is variable from one to another. Most often, the bulk is in the state regs, but some states have more spec ed law in their statute and only a minimal amount in their regs. Some states simply reference the federal reg as their regulation.



Print and PDF Books for Attendees

Special Education Law
From Emotions to Advocacy
All About IEPs

Until **Saturday, May 29**, the adobe.pdf versions are available to you as a download, in a password-protected subdirectory at:

<https://www.wrightslaw.com/2025ask/>

You must use the username and password of

ask

The books are copyright protected, for your use and are sold in our online store. Please do not distribute them.



20 U.S.C. §1400 Findings + Purpose

Highlight subsections
a through d
beginning at page 88

Why? When initially published, many laws are issued as full text left, with no indented subsections, or line breaks. Thus, it is easy to become confused.

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§1400(c) Findings

1400(c)(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society.

Page 88

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Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of **opportunity, full participation, independent living, and economic self-sufficiency** for individuals with disabilities.

* Highlight **economic self-sufficiency**

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§1400(c)(5) (B) + (C) Special Ed can be more effective by . . .

B. Strengthening the role and responsibility of parents and . . .
by ensuring that

C. "special education can become **a service** for such children rather than a place where such children are sent."

Page 88, bottom, top of Page 89

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Footnotes and Bold Text

- The **bold text** in the statute was provided by the Wrights, not by the U. S. Congress.
- The **footnotes** were added by the Wrights and are not a part of the law.

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§1400(d) Purposes

§1400(d) Purposes.--The purposes of this title are--
(1)(A) to ensure that all children with disabilities have available to them a **free appropriate public education** that emphasizes special education and related services designed to meet their **unique needs** and **prepare them for further education, employment and independent living**;

(Page 90, bottom)

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(B) to ensure that the **rights of children with disabilities and parents of such children are protected**; . . .

* On the inside front cover of your law book, write

Purposes – §1400(d), page 90

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20 U.S.C. §1401 Definitions

- In alphabetical order
- Begins with “Assistive Technology Device” and ends with “Ward of the State”

Pages 91 to 97

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§1401(3)

- (3) **Child with a disability** means a child
- (i) with . . . , and
 - (ii) who, by reason thereof, **needs** special education and related services.

The key is “**adversely affects**”
See footnotes 31 + 32

Page 92

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34 CFR §300.8

300.8 - **Child with a disability**

The Definitions portion of the regulations are very detailed and specific, two pages!

Subsection (c) defines 13 specific disability terms

See also definitions in Section 504 and ADA

Page 236

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34 CFR §300.8(a)(9)

- (9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—
- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
 - (ii) Adversely affects a child’s educational performance.

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§1401(3)

- (3) **Child with a disability** means a child

. . .

Who, by reason thereof, needs **special education** and related services.

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§1401(3)

(3) **Child with a disability** means a child

. . .

Who, by reason thereof, needs **special education** and related services.

Now, find the legal definition of **"special education"**

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§1401(29)

(29) **Special Education** – The term 'special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability . . .'

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§1401 - pages 95 + 97

(26) Related Services

(33) Supplementary Services

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§1401(26)

(26) Related Services

means transportation, PT, OT + "other supportive services, including . . . school nurse services . . . medical services, except . . ."

designed to enable a child . . . to benefit from special education

Page 95

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§1401(33)

(33) Supplementary Services

are aids, services, and other supports that are provided **in regular education classes . . . to enable children with disabilities to be educated with nondisabled children** to the maximum extent appropriate in the least restrictive environment. (LRE)

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§1401(30)

(30) **Specific Learning Disability** –
Includes “dyslexia” –

The word “dyslexia” has been in the statute since 1975! See footnote 61.

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20 U.S.C. §1412 (Catch-all Statute)

- FAPE
- Extended School Year
- Child Find – Label not necessary
- Least Restrictive Environment (LRE)
- 10 Day Rule - Private Placements
- Statewide Assessments

Page 113

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§1412(a)(1)(A) FAPE

“FAPE is available to all children with disabilities residing in the State between the ages of 3 and 21 ... **even if** the child has been suspended or expelled from school.”

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§1412(a)(3)(A+B) Child Find Mandate

A. All children to be identified,
located, and evaluated

B. Classification by Disability is **not**
Required!

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§1412(a)(5) Least Restrictive Environment (LRE)

Often referred to as the Inclusion
or Mainstreaming statute

* Write LRE in the margin

Page 114

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As close to home as possible

* Highlight last sentence,
footnote 90, page 114

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§1412(a)(10)(C) 10 Day Rule re Private Placements Tuition Reimbursement

Child had to have an IEP

10 business days prior to removal from the public
school or at the most recent IEP meeting prior to
removal

Parents must provide **clear notice** that they
reject the public placement and intend to enroll
the child in private school at public expense.

Provide the "Notice" in writing, via a letter to the
stranger, telling a story.

Pages 115, 117, + 118
see (A), (B), + (C)

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§1414 – Evals and IEPs

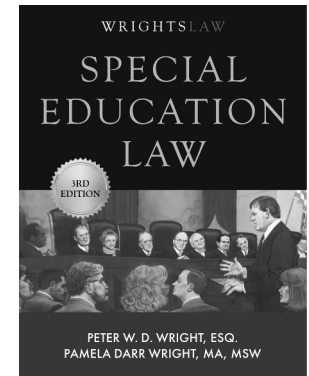
- The next critical statute is Section 1414.
- The first three subsections, a-c, are about evaluations, re-evaluations and the eligibility procedures and process
- The next subsection d is about IEPs.
- However, to fully understand the data obtained from the evals and whether the IEP is providing educational benefit, you must understand the Bell Curve.
- This is akin to your weight loss program and becoming proficient in using your bathroom scales to measure changes in the observed data!

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Wrightslaw: Special Education Law, 3rd Ed.

20 U.S.C. §1414 Evals + IEPs

Page 135



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20 U.S.C. §1414 Evaluations + IEPs

- * Highlight subsections
a through f

From page 135 to 150

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§1414(a) (b) (c) Evaluations

- Notice & description of procedures
- No single procedure may be used as the sole criterion to determine eligibility
- Child assessed in all areas of suspected disability

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§1414(a)(b)(c) (cont'd)

- Parents are members of the eligibility team
- Parents must be given report and documentation of determination of eligibility.
- Parental consent necessary for initial eval & re-evals.

20 U.S.C. §1414(a) Evaluations

- (1)(C) Initial Evals (**60 days**, unless ...)
- (1)(D) Consent

(2) Re-evals
Page 135-137

§1414(a)(1)(C)(i)(I)

60 calendar days (maybe?) depending on changing state regs (page 93)

30 school days: MI, MA, MN

35 school days: WA

45 calendar days: USVI

45 school days: CT, MA, ME, NE, NV, OK, TX, UT, DoDI's

50 instructional days: IN

60 calendar days: AL, AR, AZ, CA, CO, HI, IA, MD, ME, MO, MS, NM, NY, OH, RI, SC, TN, VT, WI

§1414(a)(1)(C)(i)(I)

60 calendar days: ID, IL, FL, GA, PA, but...

60 business days: LA

65 business days: VA

60 school days: OR, KS

60 school days + includes IEP: KY

80 calendar days: WV (Chap 3, Section 2(A))

90 calendar days + IEP: AK, NC + NJ

"Within 60 days of receiving parental **consent** . . .
or, if the state establishes a timeframe . . .

Page 135 – date of **consent**, not request date.

§1414(b) Evaluation Procedures

- (b)(2) Conduct of Evaluation
- (b)(3) Additional Requirements
- (b)(4) Determination of Eligibility and Educational Need
- (b)(6) Specific Learning Disabilities

Page 138-139

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§1414(b)(6) SLD + RTI

SLD: Discrepancy between IQ and achievement not required. School may use a process to determine if child responds to scientific, **research-based intervention (RTI)** in the evaluation procedures

(* write **RTI** in margin)
Page 139

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Response to Intervention

"An RTI process **does not** replace the need for a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§300.304."

Source: US Dept of Ed FR 46648

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Response to Intervention

Different names, different parts of the country

SRBI Scientific Research-Based Intervention

MTSS Multitiered System of Supports

MLSS Multi-Layered System of Supports

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Response to Intervention

See the Wrightslaw YouTube video at:

<https://youtu.be/TdM3nC8Sdh8>

Inside Front Cover of the law book –

* write **RTI, page 139**

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§1414(c)

Additional Requirements

(5) The LEA “**shall** evaluate a child with a disability . . . **before determining** that the child is no longer a child with a disability.”

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IEPs - 20 U.S.C. §1414(d)

Inside Front Cover, write:

IEPs, Section 1414(d)
(page 99)

IEP Regs 300.320 – 300.328
(page 245)

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20 USC §1414 - IEPs

High speed overview

Later, take your time and read this statute closely. Then place your state regs adjacent to them, re-read, cross-reference, highlight and place notes in the margin.

If you have confusion about a word, a concept, a phrase, read the discussion in the Commentary. Others will also have been confused. Vague words in statutes are deliberate.

Pages 142 - 150

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§1414(d) Individualized Education Programs

1. Definitions
2. Requirements
3. Development of IEP
4. Review and Revision
5. Multi-Year IEPs
6. Failure to Meet Transition Objectives
7. Children in Adult Prisons
- * Highlight subsections of (d)

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20 USC §1414(d)(3) Development of IEP

- (A) In General
- (B) Consideration of Special Factors**
 - (i) positive behavioral interventions (FBA/BIP)**
- (C) Requirement with Respect to Regular Education Teacher
- (D) Agreement
- (E) Consolidation of IEP Team Meetings
- (F) Amendments

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§1414(d)(3)(B) Special Factors

shall consider -

- (i)** Behavior and positive behavioral interventions
(Note: There is extensive caselaw that a flawed FBA results in an inadequate BIP thus FAPE denied since initial eval. Comp ed awarded for a period that looks back to that very early date.)
- (iv)** Communication needs – failure to adequately address has also resulted in clear violation of ADA and increasing litigation. (See 28 CFR Part 35, Subpart E – Communications)
- (v)** Assistive Technology devices and services

Page 147

- * In the margin write FBA / BIP / See Chapter 7, IEP book

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FBA + BIP Atty Reichhardt + Ciolfi

The BIP should not be artificially limited to "one or two" behaviors.

Specifically, the purpose is to identify behaviors that interfere with the ability to learn and participate in the general curriculum.

<https://www.wrightslaw.com/info/bip.ciolfi.reichhardt.htm>

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§1414(e) – Educational Placements

Parents are members of any group that decides educational placement

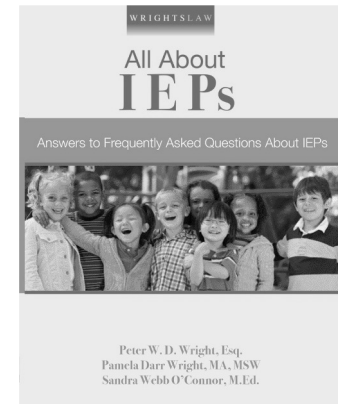
Placement is not necessarily a physical location or “place” – it is the nature of the program.

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Wrightslaw: All About IEPs

A fun, fast FAQ book to read!

Go to page 24 in the IEP book.



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Evals/Consent

- Question - “Consent to all, or get nothing?”
- Answer – Agency may not use refusal to consent to one service as a basis to deny others
- Regulation 300.300(d)(3)
- See Page 24, “All About IEPs”

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Chapter 7 Special Factors

- Behavior Problems
- Functional Behavioral Assessment
- Positive Behavioral Support Plan
- Sample letter

Page 59 of the IEP book

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Demo - Wrightslaw FBA + BIP

- Functional Behavioral Assessment (FBA)
- Behavioral Intervention Plan (BIP)
- Use the Google Search Engine at Wrightslaw to search against either FBA or BIP or both
- [Link here](#)

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Wrightslaw FBA + BIP

- Functional Behavioral Assessment (FBA)
- Behavioral Intervention Plan (BIP)
- Use the Google Search Engine at Wrightslaw to search against either FBA or BIP or both

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Fun Book Test Yourself

Go to page 10 / Question - Answer?
Read other questions, test yourself
Later, prior to reading a question,
cover the answer with a 3x5 card,
think it through, then read the answer.
Do this several times to truly master
the **Law of IEPs!**

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Commentary

- [Cover Page](#)
- Volume 71, Federal Register, August 14, 2006, beginning at page 46661 through 46688.
- This document is 307 pages long. The Commentary about the IEP regs begins on page [123](#) and continues through page [150](#)

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Commentary

Using the "Find" feature, if you look up the term "comparable" you will see that it means "similar or equivalent". "Courses of study" is defined in the Commentary as "advanced placement classes."



Print

Print a copy of the IEP portion of the Commentary.

Consider printing the "Cover" page, on cardstock paper, on both sides, cut 1/4" off each side so that it is 8"x10.5." Use it as a bookmark inside of your law book.

When stressed at Eval or IEP meeting, let it fall out. Why? - triggers the fear of the unknown among others!



Inside Front Cover? Why?

Law School 1st Oral Argument

Flubbed, Memory Problems

Court - Equitable Distribution Transmutation

Due Process Hearings

My own personal exhibit list contained an additional column

Transcripts - Appeal + Discovery

Notes on cover

To save me from my severe memory issues, I had to develop compensatory techniques.

What did I do? - A story . . .



Photographic Memory?

Google "photographic" on our website

Paradise at End of the Road

The reporter interviewed my clients, my expert witnesses, a school psychologist, a director of Spec Ed and a school board attorney . . .

www.wrightslaw.com/news/2003/champion.lohmann.htm



Inside Front Cover? Why?

To develop a photographic memory,
or . . .

At least the appearance of one.

Perception Rules!

Google "photographic" at wrightslaw



20 U.S.C. §1415 Procedural Safeguards - PWN, DP, Court, Stay-Put, Discipline

- * Highlight subsections
a through o

From page 151 to 169



§1415(d - o) Procedures

- b Types of Procedures
- c Prior Written Notice
- d Procedural Safeguards Notice
- e Mediation
- f Due Process
- g Appeal – 2 Tier States
- h Safeguards
- i Admin Procedures
- j Stay Put
- k Discipline
- l through o



Alternatives to Due Process?

State Administrative Complaint

Complaint with OCR

Complaint with DOJ



Due Process

- Is a merger of a Med Mal + Domestic Relations case
- Being litigated pursuant to the Fed Rules of Civ Procedure
- Why? Expert witnesses, emotions of betrayal.
- Your role, defuse, help parent think sales, marketing, persuasion and avoid mindset of what is "legally right."
 - Failure and the case is polarized and everything is either right or wrong, black or white, and child suffers.

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§1415(b) Types of Procedures IEE

Right to obtain Independent
Educational Evaluation (**IEE**)

Page 151

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IEE

If school disagrees, they must
request a spec ed due process
hearing against the parent.

See 2016 11th Circuit case - *Cobb
County v. DB*

\$271,000+ attys fees awarded
against school district

Case is in our 2016 Year
in Review book

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§1415(c)(1) Content of (*Prior*) Written Notice

shall include -

- (A) a description of the action
proposed or **refused** by the agency;
- (B) an explanation of why the agency
proposes or refuses to take the action
and ...

Page 153

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... a description of each evaluation procedure, assessment, record, or report ... used as a basis for the proposed or refused action;

(E) A **description of other options** considered by the IEP Team and the reason **why** those options were **rejected**;

(F) a description of the **factors** that are relevant to the agency's proposal or refusal;

Page 153

§1415(c)(1) (*Prior*) Written Notice

If the school does not send it, the parent should write a "Letter to the Stranger" that describes facts and asks specifically why proposed change was rejected, what other options were considered, why they were rejected, a description of each eval used, etc.

§1415(e) Mediation

- State bears costs
- Legally binding agreement
- Enforceable in State or federal court

Page 153

§1415(f) Due Process Hearing

Page 112

§1415(j) Stay Put

During the pendency of any (due process) proceedings, the child remains in the “then-current placement” unless the parents and school otherwise agree.

Page 162

§1415(k) “The Discipline Statute” Placement in Alternative Educational Setting

- Key is **Manifestation Determination**
- Whether there was an FBA and BIP

Pages 163-167

IDEA – End of Part B

Part A

20 U. S. C. §1400-1406

Part B

20 U. S. C. §1411-1419

Key Sections

§1400, 1401, 1412, 1414,
1415

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Bullying Statutes

Bullying is frequently considered to be discriminatory harassment and disability discrimination, and a school district's deliberate indifference to this could be a violation of Section 504 and the ADA.

Google – yourstatename and simply the word bullying, example: bullying michigan

For the laws in each state, see

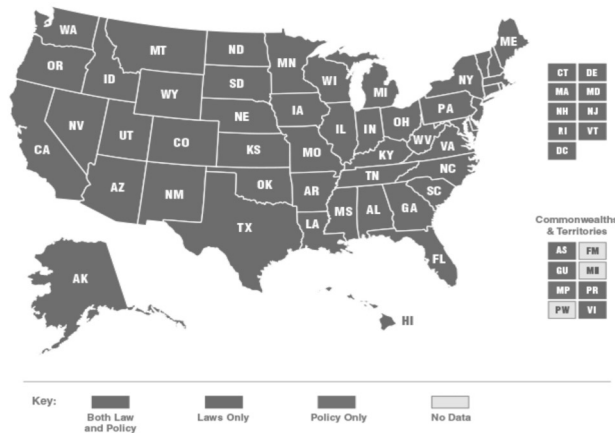
<https://www.stopbullying.gov/resources/laws>

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Stopbullying.gov

State Anti-Bullying Laws & Policies

State Anti-Bullying Laws & Policies



Supreme Court of the United States SCOTUS

Most recent cases

2/22/2017 **Fry**

3/22/2017 **Andrew F.**

3/21/2023 **Perez v. Sturgis Schs.**

All three were **unanimous** decisions in favor of the child and parents! Full text of first two is in our 2017 "Year in Review" book and all three cases are on our website at:

<https://www.wrightslaw.com/law/scotus/>

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Evolving Case Law

- Evolving case law from SCOTUS and US Courts of Appeal are moving forward in a pro-child direction.
- See use of the word “potential” by Chief Justice Roberts in the *Endrew F.* case and, a week later, used by the Ninth Circuit in the *Antelope Valley* case.
- *Perez v. Sturgis Pub. Sch.* may result in more “dollar damage” cases and possible jury trials re public school education. See discussion about the *Rogich* case at page 147 and 339 in our law book.

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Chapter 4 – Overviews Section 504 and the ADA

Turn to page 70

The ADA is based on Section 504 and Section 504 is based on the ADA. Each law incorporates the other by reference. Section 504 - Nondiscrimination is a single section within The Rehabilitation Act of 1973, located at 29 U.S.C. § 794. It has few subsections, details, and lacks specificity. It is conceptually much harder to assess specific scenarios.

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Chapter 4 – Overviews Section 504 and the ADA

Page 70

Section 504 incorporates by reference much of the Americans with Disabilities Act (ADA) and requires one to go back and forth between Section 504, its regulations and the ADA statute and regulations to fully understand a legal issue.

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Section 504 and the ADA

Page 71

To fully master the definition of a disability as defined by Section 504 and ADA concerning public entities, be aware that the **ADA statute is the starting point and provides an overview definition.**

Look first at 42 U.S.C. § 12102 and then 34 CFR § 104.3(j) and 28 CFR § 35.108, the Section 504 and the ADA regulations respectively.

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Chapter 4 – Overviews

Section 504 and the ADA

Page 71

The ADA "Definition" has four subsections: "disability," "major life activities," being "regarded as having an impairment," and "rules of construction."

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Chapter 7 - Section 504 of the Rehabilitation Act of 1973

29 U. S. C. §794

- Section 504: civil rights law
- Incorporates by reference 42 USC §12102, i.e. ADA
- Purpose: to protect individuals from discrimination, to provide access to services

Pages 331-358

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Section 504

- Aide for field trips
- \$\$\$ Damages which are not available under an IDEA claim
- Retaliation \$\$\$ damages
- Eligibility expanded significantly as the result of changes to ADA

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Section 504 v. IDEA

Access & Opportunity
versus
Access & Opportunity
AND
Appropriate Education & Educational
Benefit

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Section 504 v. IDEA

IDEA = 504 + ADA protections

Sec. 504 does not = IDEA entitlement

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Section 504 + ADA

- Eligibility very very broad
- ADHD
- Allergies
 - Tree Nut/Peanut
 - Gluten
 - Dairy
- Asthma
- Diabetes
- Epilepsy
- Episodic

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OCR / DOJ

Investigation of complaints by either agency are generally not related to IEP compliance issues but are more related to discriminatory issues. See

<https://www.wrightslaw.com/info/sec504.faqs.ocr.complaints.htm>

<https://www.wrightslaw.com/info/sec504.index.htm>

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Selected Cases

Settlement Order in a NJ Daycare Toileting case by USDOT / ADA Title III

<https://www.wrightslaw.com/law/pleadings/ada/daycare/NJ.ADA.daycare.settlement.pdf>

Ramsay v. Medical Board / Dyslexia / ADA Title II/504

<https://www.wrightslaw.com/law/pleadings/ada/licensing/se/>

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IEP v. §504 Plan ?

IEP under IDEA or Section 504 Plan? - When a child is found "not eligible" for an IEP, the school district may offer a Section 504 Plan as a "consolation prize."

Is a Section 504 Plan really a prize? There are pros and cons for Section 504 Plans and IEPs. The correct answer will depend on the child's needs and the willingness of the school to meet those needs.

There is no legal definition for a "Section 504 Plan" nor must it be in writing.

Publications by the USDOE and OCR explain that Section 504 Plans describe the specific accommodations that will be provided to a child.

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Allergies, Anaphylaxis Asthma, Epilepsy, etc. Episodic Disabilities

All of these cases, legal concepts, apply to all "Episodic" disabilities

Do not have tunnel vision specific to a disability

Protected under both §504 and the ADA.

Search the law book against
"negative side effects of medication"

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Chapter 8 – The Americans with Disabilities Act

For background, the Rehabilitation Act of 1973 was passed prior to passage of the ADA.

Section 504 has been amended several times and is the basis for the later 1990 Americans with Disabilities Act (ADA).

Congress amended this law on September 25, 2008, in Public Law 110-325 as a response to several U. S. Supreme Court rulings.

Pages 358-408

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ADA

Title I is about Employment.

Title II is about **public schools**.

Title III is about public accommodations and **private schools and services** including day care, nursery schools, private universities, licensing boards, etc.

Title IV is about Telecommunications.

Title V is Miscellaneous.

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42 U.S.C. §12102

(1) Disability - The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more **major life activities** of such individual;

(B) a **record** of such an impairment; **or**

(C) **being regarded** as having such an impairment . . .

(4)

(A) [It] shall be construed in favor of **broad coverage** of individuals . . . and [can be]

(D) An impairment that is **episodic** . . .

ADA – definitions

28 CFR §35.108(b)(2)

28 CFR §36.105(b)(2)

The definitions in Part II and Part III, in the regs for each, 35 and 36, are identical.

They explain that the Definition of "disability" includes "**dyslexia and other specific learning disabilities**, Attention Deficit Hyperactivity Disorder . . . "

ADA – definitions

28 CFR §35.108(d)(3)(ii)

28 CFR §36.105(d)(3)(ii)

Negative side effects of medication

Questions

Disability

Behavior

Cancer Treatment

Applied Studies

OCR

Eligibility

Misconduct

Transportation

DEI

ICE

DEMO – ChatGPT

<https://chatgpt.com/>

Questions – Disability? Eligibility?

Can a student on homebound still go through the IEP/ 504 eligibility process? I have a student who was told by the school that could not happen until the doctor cleared him to return to school, though that would not allow him start the year with the appropriate accommodations necessary?

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Questions – Disability? Eligibility?

If a child study team is requested and a child is not found to be in need of further evaluation for an IEP, shouldn't that same meeting discuss the need for a 504?

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Questions – Disability? Eligibility?

I keep hearing in eligibility meetings/ child study meetings that, although the student I am working with shows lower scores/deficits, he/she is still on par with his/her classmates, so there is no real reason to find them eligible. Can a student be denied services because the school/classroom is also behind grade level?

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Behavior FBA / BIP?

I am working with a young lady who has behaviors listed in the IEP. According to the psychoeducational report from the eligibility evaluation, her elevated scores on scales reflecting problem with fundamental behavioral and/or emotional regulation suggests that more global problems with self-regulation are having a negative effect on active cognitive problem solving.

Yet, the team refuses to acknowledge the need for behavioral supports. They did write a goal, but they didn't implement any support to help her reach that goal. Is it a requirement to address appropriately a concern listed in the PLOP?

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Intentional Misconduct

I am working with a young lady in high school. She had a brain tumor and has ambulatory difficulties. Her para support is from a contracted company and she has refused to follow basic accommodations and has disconnected her power wheelchair so the young lady could not work it, taking away her dignity and independence. What can I do?

Can an IEP specify a specific para trained in brain injuries and late effects of childhood cancer or to be an employee of the county?

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Impact of Treatment for Cancer

For a child who has undergone treatment for cancer and school staff do not understand the social, emotional, and physical impact of the treatment on the child, what is the best approach to help school staff understand the long term effects of treatment especially when students have areas they excel in and "look normal/healthy"?

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Transportation

Does a child with a disability in public school have any right to midday transportation through either a Section 504 Plan or an IEP?

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Applied Studies Diploma?

In Virginia, for a student with a disability and on an IEP or has a Section 504 Plan, what is the process to move the student into an applied studies diploma? Is it simply an IEP decision or are there other considerations as well?

<https://www.doe.virginia.gov/about-vdoe/search?q=applied%20studies%20diploma>

<https://www.doe.virginia.gov/parents-students/for-students/graduation/diploma-options/applied-studies-diploma>

<https://www.doe.virginia.gov/home/showpublisheddocument/33529/638052412627930000>

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DEI ?

How do the restrictions on DEI impact exceptional education programs in our schools?

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OCR ?

What may be the impact of cuts to the Office of Civil Rights to students with 504 plans?

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ICE? Immigration, Customs, Enforcement

The parents of public school students with disabilities who are undocumented immigrants are afraid to assert their rights.

As an individual trying to help them, how can I effectively support those children and their families?

(Plyler v. Doe (1982): The U.S. Supreme Court ruled that undocumented children have a constitutional right to a free public education from K-12, regardless of immigration status.)

(IDEA & Section 504: Immigration status does not affect a child's eligibility for special education or 504 protections.)

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Courts of Appeal Circuit

- 1 ME NH MA RI PR
- 2 CT NY VT
- 3 DE NJ PA
- 4 MD NC SC VA WV**
- 5 LA MS TX
- 6 KY MI OH TN
- 7 IL IN WI
- 8 AR IA MN MO ND NE SD
- 9 AK AZ CA HI ID MT NV OR WA
- 10 CO KS NM OK UT WY
- 11 AL FL GA
- DC

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Carter case - What Controls Outcome? Law or Facts?

Preparation for Oral Argument

Only one thing really controls outcome

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Carter case - What Controls Outcome? Law or Facts?

Preparation for Oral Argument

End of first day. Pete, "your legacy will be . . . because . . ."

Why – what's wrong?

Comments at end of second day.

Only one thing controls outcome, and it is not the law, not the facts, but instead, whether 5 of the 9 Justices, in their . . .

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Shannon Carter

10/6/1993 +
11/9/1993

*Florence County
Sch. Dist. IV
v.
Shannon Carter*

Unanimous 9-0



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Caselaw Research Google Legal Scholar

<https://scholar.google.com/>

Courts to search? Select all or 1 or 2
search terms:

"individuals with disabilities education act"

Bottom of page – **"alert"**

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PACER

PACER (Public Access To Court Electronic Records)
<https://pacer.uscourts.gov/>

Using PACER with the name of a specific court and a case number, by opening the docket, you can go into a court's file and read the Complaint, exhibits, transcripts, pleadings, briefs, rulings, and more.

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PACER

Cost for Accessing PACER \$0.10 per page

You won't be charged more than \$3 per document

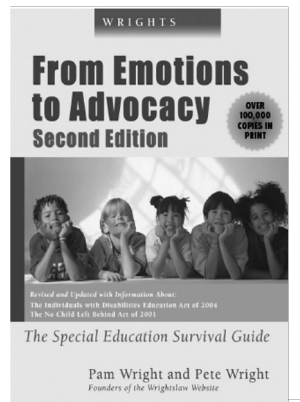
Audio Files are provided as .mp3 files for some hearings as part of the court record

Billing: Users are billed on a quarterly basis **if they accrue more than \$30** in the previous quarter. You will receive an invoice via mail or email.

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Wrightslaw: From Emotions to Advocacy 2nd Ed.

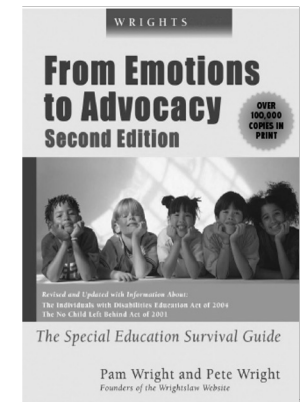
"The Book" for parents! An emotional roller-coaster. Parents must read this book, 3 times. First time, skim, second time, highlight, write notes, third time, skim.



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Wrightslaw: From Emotions to Advocacy 2nd Ed.

Overview of Book
by Section
by Chapter



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Chapter 27: In Summation

"Revenge is the bastard child of justice."

"If we or our argument are perceived as a threat, we will never be heard."

- Gerry Spence, trial lawyer, author

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Revenge

"Holding on to anger is like grasping a hot coal with the intent of throwing it at someone else; you are the one who gets burned." – Buddha

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Chapter 6: Resolving Parent School Conflict

"If you only have a hammer, you see every problem as a nail."

- Abraham Maslow, psychologist

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Conflict!

Special ed law makes conflict inevitable

Why?

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IDEA 2004

Empowers parents as “equal partners”

Joint Task: To develop an “appropriate” education that provides educational “benefit”

Responsibility: school to implement (pay for) plan

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6 Reasons for Conflict

- Different perspectives of child – deficit model
- Lack of accurate info
- Few options
- Hidden issues (i.e. cost)
- Feeling devalued, lied to
- Poor communication, intimidation

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Steps to Resolve Conflict

- Focus on child’s needs, not feelings.
- Ask questions about problem. Listen. Repeat.
- Focus on facts, not who is right.
- Know your rights under IDEA.

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More Steps to Resolve Conflict

- Identify areas of agreement.
- Separate people from the problem.
- Avoid personal criticism.
- Ask for data – test scores, work samples
- Present info from outside of school – MD, therapist

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Conflict

When you have conflict, you have two goals

- To resolve the problem
- To protect the parent-school relationship

The Parent School Relationship: a marriage without the possibility of divorce!


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Chapter 7: Crisis! Emergency! Help!

- Typical presenting problems
- Names, dates of birth change
- School problems remain the same

A crisis hits.

Parents fear that their child may be harmed. What should they do, immediately?


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NOTHING!


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First Steps

- Keep emotions under control.
- Do not let situation become polarized
- Keep the child out of the middle
- Think Tactics – “How can I turn a lemon into lemonade?”


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Chapter 8: Evaluations & a Child's Disability

Parents need to learn about psychological & educational tests, what they measure

They need to understand child's test scores and how to use to measure progress (or lack of progress)

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Comprehensive Evaluation

Includes Case history

May include speech/lang, neuropsych evals

Includes pre- & post- test scores

Reports scores as SS, %Rank, GE + AE

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Comprehensive Evaluation - : The Roadmap

- Describes educational program child needs and why
- Always use the word "Appropriate"
- **Never** use the word "**Best**" or **Maximize** or **Ideally**

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Chapter 9: The File: Do It Right!

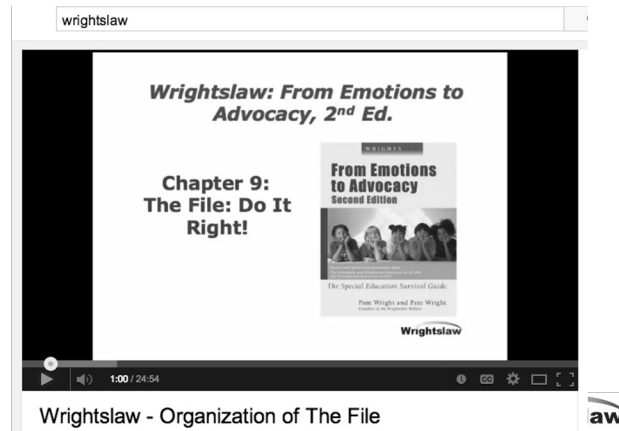
"Do the hard jobs first. The easy jobs will take care of themselves."

– Dale Carnegie



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YouTube Wrightslaw Channel



When the Parent becomes Organized

- Parent is less anxious
- Is more confident
- And, is in control

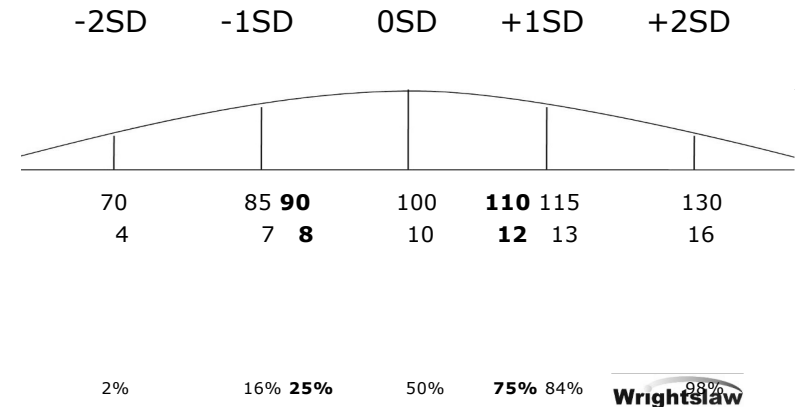


From Emotions to Advocacy

Chapter 10 & 11 Tests & Measurements & the Bell Curve



Normal Range



Standard Scores, Subtest Scores, Percentile Ranks

SS	Subtest	%Rank
• 130	16	98
• 115	13	84
• 110	12	75
• 105	11	63
• 100	10	50
• 95	9	37
• 90	8	25
• 85	7	16
• 70	4	2


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Chapter 22: Creating Paper Trails

"An oral contract isn't worth the paper it's written on."

- Pete Wright, attorney


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What Are Paper Trails?

Contact log - record of events, conversations, meetings (p. 219-220)

Journals – Have the parent **get a "Steno" pad and update it every day**

Calendars

Problem Report (see page 221)

Letters


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Chapter 24: Writing the Letter to the Stranger

"If you would persuade, you must appeal to interest rather than intellect."

Benjamin Franklin

*If you would persuade, you must appeal to **emotions** rather than intellect.*

Pete Wright


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Letters to the Stranger

Blame Approach v. Story-Telling Approach
Adverse Assumption: Parents cannot testify? Letters tell the story.

Use letters to:

- document problems, what the parent was told
- attempts to resolve problems

Letter to the Stranger

- Story-telling approach creates interest
- Describes problem & solution
- **Persuasive:** creates sympathy, desire to right the wrong
- Be honest: share your fears

https://www.wrightslaw.com/advoc/articles/Letter_to_Stranger.html

Paternalism

- "The paternalist attitude of professionals is what holds parents back."
- "The biggest handicap of persons with disabilities are the expectations of others."
- Source: Harry Gewanter, MD 7/31/2013

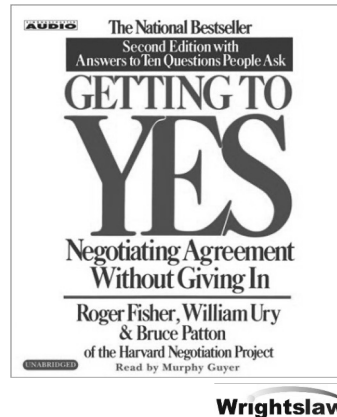
Chapter 25: Preparing for Meetings

- Use Pre-meeting worksheet (p 265)
- Organize & review file, read IEPs, notes
- Prepare a Parent Agenda (p 267) or IEP Meeting Worksheet
- Handouts & charts
- Practice!!

Your Role as a Negotiator & Problem Solver

We all negotiate every day - with spouse, kids, boss, co-workers, neighbors, friends -- and the school

Special Education Services are best acquired through negotiation, not litigation!



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When You Negotiate ...

You put yourself in shoes of people on other side & answer questions--

- **Perceptions:** How do they see the problem?
- **Beliefs:** How do they feel about the problem?
- **Interests:** What do they want?
- **FEARS:** What are they afraid of if they give you what you want?

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Rules of Negotiating

1. Know what you want!
2. Understand position of other side
3. Have 2 interests—solve problem, protect relationship
4. Keep emotions under control.
Emotions have negative impact on creative problem solving.
5. Seek win-win solutions

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Putting It Together

- Conflict is normal and inevitable; parents must keep their emotions under control.
- Parents must learn the principles of negotiation and persuasion.
- Must understand the law and the analysis of the data, i.e., the Bell Curve.
- Must understand how to write the Letter to the Stranger that opens doors to services rather than causing them to be slammed shut.

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COPAA

Council of Parents Attorneys and Advocates



www.copaa.org

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