

**William & Mary School of Law**  
**Syllabus: LAW 363 - Special Education Law and Advocacy**  
**Fall 2009**

Note: We made extensive revisions to the syllabus used in Spring 2009 and expect to make more revisions and modifications during the course. If we modify the content and/or assignments, we will tell you during class, and through email and announcements posted on Blackboard.

Session	Date and Topic
<b>1</b>	<p style="text-align: center;"><b>8/24/09</b></p> <p style="text-align: center;"><b>Educating Children with Disabilities: Overview of Federal Legislation</b></p> <p><b>Class Discussion:</b> We will review and answer questions about the policies, assignments, grades, absences, and laptop use. We will provide a brief overview of the Wrightslaw site and how to find information on different topics.</p> <p>We will provide an overview of special education law. We will discuss:  The Individuals with Disabilities Education Act: Purposes and Key Definitions  Section 504 and the Americans with Disabilities Act (ADA): Overview</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p>In <i>Wrightslaw: Special Education Law</i> (SEL), read Chapters 1-4 and 20 USC § 1400(c) beginning at page 45. (For all United States Code reading assignments in the SEL book, pay close attention to <b>footnotes</b> and comments about the statute.)</p> <p><b>Cases:</b>  <i>Mills v. Board of Education</i>, 348 F. Supp. 866 (D.DC 1972)  <i>Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania</i>, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972)  <i>Timothy W. v. Rochester NH School District</i>, 875 F.2d 954 (1<sup>st</sup> Cir. 1989)</p>
<b>2</b>	<p style="text-align: center;"><b>8/31/09</b></p> <p style="text-align: center;"><b>Legislative History &amp; Core Legal Concepts</b></p> <p><b>Class Discussion:</b> Prepare to discuss <i>PARC</i>, <i>Mills</i>, and <i>Timothy W</i>, and the legislative history and policy implications of the IDEA, including the “zero reject” policy.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> Read 20 USC § 1400(d), 1401(3), 1401(9), 1412(a)(1), 1412(5); and 34 C.F.R. §§ 300.101, §102, §115, §116.</p> <p><b>Cases:</b>  Read the U. S. District Court, Court of Appeals and U. S. Supreme Court decisions in <i>Rowley</i> in chronological order.  483 F. Supp. 528 (SD N.Y. 1980)  483 F. Supp. 536 (SD N.Y. 1980)  632 F. 2d 945 (2d Cir. 1980)</p>

	<p>458 U.S. 176 (1982) in SEL, begins on page 343  <b><i>Sacramento Unified School District v. Rachel H.</i></b>, 14 F.3d 1398 (9<sup>th</sup> Cir. 1994)</p> <p>Cases will be assigned for the first Written Statement (750 words). The cases will focus on the legal issues of FAPE, LRE, Eligibility, and IEPs. <b>Your Written Statement is due at Noon, September 14, 2009.</b></p>
<p><b>3</b></p>	<p style="text-align: center;"><b>9/7/09</b></p> <p style="text-align: center;"><b>Core Legal Concepts: Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE)</b></p> <p><b>Class Discussion:</b> Be prepared to discuss the decisions in the <i>Rowley</i> case, their relevance, the decision in <i>Sacramento v. Rachel H.</i>, and the legal concepts of “free appropriate public education” and “least restrictive environment.”</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> Read 20 U.S.C. § 1414(a)(b)(c) and 34 C.F.R § 300.300-300-311. Read Chapter 7 (pages 291-298)  <b>Article:</b> <i>A Step-by-Step Process §504/ADA Eligibility Determinations: An Update</i> by Perry Zirkel. 239 Ed. Law Rep. 333 (2009)  <b>Cases:</b>  <i>Bd. of Educ. v. S.G.</i>, 230 Fed.Appx. 330 (4th Cir. 2007)  <i>Loch v. Bd. of Educ.</i>, 573 F.Supp.2d 1072 (S.D. Ill. 2008)  <i>Forest Grove v. T.A.</i>, ___ U. S. ___, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009)</p> <p>Work on your Written Statement to be filed electronically <b>by Noon on 09/14/09.</b></p>
<p><b>4</b></p>	<p style="text-align: center;"><b>9/14/09</b></p> <p style="text-align: center;"><b>Evaluations and Eligibility</b></p> <p><b>Class Discussion:</b> We will discuss evaluations and eligibility under IDEA, Section 504, and case law variations. Prepare to discuss the criteria for eligibility under each statute, and how they are different. Prepare to discuss the facts, issues, holdings, and rationale in the assigned cases. Prepare to discuss the article by Zirkel and recent statutory changes.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> Read 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.320-300.328  <b>Download and read</b> the chapter about SMART IEPs:  <a href="http://www.wrightslaw.com/bks/feta2/ch12.ieps.pdf">www.wrightslaw.com/bks/feta2/ch12.ieps.pdf</a>  <b>Cases:</b>  <i>Escambia County Bd. of Educ. v. Benton</i>, 406 F.Supp.2d 1248 (S.D. Ala. 2005)  <i>County Sch Bd. v. R.T.</i>, 433 F.Supp.2d 657 (E.D. Va. 2006)  <b>Web:</b> Review resources about IEPs at <a href="http://www.wrightslaw.com/info/iep.index.htm">www.wrightslaw.com/info/iep.index.htm</a></p> <p style="text-align: center;"><b>Additional Assignments for the Next Class</b></p> <p><b>Read</b> the Wrightslaw webpage about the Commentary to the Federal Special Education Regulations at: <a href="http://www.wrightslaw.com/idea/commentary.htm">www.wrightslaw.com/idea/commentary.htm</a></p>

	<p><b>Download</b> the portion of the Commentary about IEPs from:  <a href="http://www.wrightslaw.com/idea/comment/46661-46688.reg.320-328.ieps.pdf">www.wrightslaw.com/idea/comment/46661-46688.reg.320-328.ieps.pdf</a>  <b>Skim</b> the IEP portion of the Commentary. Use the search / find feature to find the definition of “comparable” and “courses of study.” Read the discussion about these two concepts.</p> <p><b>Write</b> a SMART IEP goal for a mythical student that targets a reading, writing, arithmetic or spelling skill.  <b>Write</b> a SMART IEP goal relating to your own acquisition of a skill.  <b>Print</b> two copies of each goal on separate sheets of paper. Put your name at the bottom of the page and bring them with you to class. Turn one copy in. Keep the other for yourself. We will select some of the goals for discussion.</p> <p><b>NOTE about Written Statements &amp; Oral Arguments</b></p> <p>We will provide the cases that will be argued and links to the Written Statements submitted by the students. For each of the next three weeks, you will read the four cases that will be argued and the Written Statements. We will tell you which cases and statements you need to read each week.</p>
<p style="text-align: center;"><b>5</b></p>	<p style="text-align: center;"><b>9/21/09</b>  <b>Individualized Education Programs</b>  <b>Oral Argument - Round 1</b></p> <p><b>Class Discussion:</b> We will discuss Individualized Education Programs. Be prepared to discuss the facts, issues, holding, and rationale in the cases assigned last week.</p> <p>Based on your reading assignments, be prepared to contribute to this discussion.</p> <p><b>Oral Argument:</b> Four cases will be argued before the students. You should have read the four cases and the Written Statements filed by the students so you can act as a Judge during Oral Argument.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> Read 20 U.S.C. § 1401(1), 1401(2), 1401(26), 1401(33) and 34 C.F.R. § 300.34 and § 300.42.  <b>Cases:</b>  <i>Irving School District v. Amy Tatro</i> (in SEL, page 359)  <i>Cedar Rapids School District v. Garret F.</i> (in SEL, pgs 385)  Read the four cases and the Written Statements filed by the students so you can participate as a Judge during Oral Argument. We will provide you with a list of upcoming cases and links to the Written Statements.</p>

<b>6</b>	<p><b>9/28/09</b></p> <p><b>Medical Issues, Related Services, Supplementary Aids and Services, Assistive Technology Oral Argument - Round 2</b></p> <p><b>Class Discussion:</b> We will discuss related services and supplementary aids and services in the IEP. Be prepared to discuss <i>Irving v. Tatro</i> and <i>Cedar Rapids v. Garret F.</i> and the medical services issue.</p> <p><b>Oral Argument:</b> Four cases will be argued. You should have read the cases and the Written Statements filed by the students so you can participate as a Judge during Oral Argument.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>Article: Read</b> “Letter to a Stranger” at <a href="http://www.wrightslaw.com/advoc/articles/Letter_to_Stranger.html">www.wrightslaw.com/advoc/articles/Letter_to_Stranger.html</a></p> <p><b>SEL:</b> Read 20 U.S.C. § 1412(a)(10), 1415(a)-(j), 34 CFR § 300.148</p> <p><b>Cases:</b>  <i>Burlington v. Mass. Dept. of Ed.</i>, 471 U.S. 359 (1985) (SEL, page 364)  <i>Florence County Sch. Dist IV v. Shannon Carter</i>, 510 U.S. 7 (1993) (SEL, page 382)  <i>Forest Grove v. T.A.</i>, ___ U. S. ___, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009)</p> <p>Read the cases and Written Statements filed by the students so you can participate as a Judge during Oral Argument. We will provide a list of upcoming cases and links to the Written Statement</p>
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<b>7</b>	<p><b>10/5/09</b></p> <p><b>Tuition Reimbursement, Due Process, Litigation, and Procedural Safeguards Oral Argument - Round 3</b></p> <p><b>Class Discussion:</b> We will discuss how to prepare a tuition reimbursement case for a special education due process hearing, and the rules of procedure including “Prior Written Notice” and the Resolution Session. Be prepared to discuss the facts, issues, holdings, and rationale of the three U. S. Supreme Court tuition reimbursement cases from last week’s reading assignment.</p> <p><b>Oral Argument:</b> Four cases will be argued. You should have read the cases and Written Statements filed by the students so you can participate as a Judge during Oral Argument.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> Read 20 U.S.C. § 1415(k); 34 CFR § 300.106, 300.530 - 537</p> <p><b>Cases:</b>  <i>School Bd of the County of Prince William, VA v. Malone</i>, 762 F.2d 1210 (4<sup>th</sup> Cir. 1985)  <i>Honig v. Doe</i>, 484 U.S. 305 (1988)  <i>Fitzgerald v. Fairfax County School Bd.</i>, 556 F.Supp.2d 543 (E.D.Va. 2008)  <i>JH ex rel. JD v. Henrico County School Bd.</i>, 395 F.3d 185 (4<sup>th</sup> Cir. 2005)</p> <p><b>Web Resources: Review the discipline and ESY pages on Wrightslaw.</b>  <a href="http://www.wrightslaw.com/info/discipl.index.htm">www.wrightslaw.com/info/discipl.index.htm</a>  <a href="http://www.wrightslaw.com/info/esy.index.htm">www.wrightslaw.com/info/esy.index.htm</a></p>
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	Cases will be assigned for the 2 <sup>nd</sup> series of Written Statements and Oral Arguments. * <b>Written statements must be filed no later than Noon on October 19, 2009.</b> *
<b>8</b>	<b>10/12/09</b> <b>Fall Break: No Class</b>
<b>9</b>	<p style="text-align: center;"><b>10/19/09</b> <b>Extended School Year; Discipline;</b> <b>Due Process Hearings &amp; Court Proceedings</b></p> <p style="text-align: center;"><b>** Written Statements Must be Filed Today by Noon **</b></p> <p><b>Class Discussion:</b> We will discuss how to prepare an Extended School Year (ESY) case and defend a special education discipline case. Be prepared to discuss the facts, issues, holding, and rationale of the three discipline cases and the ESY case in last week’s reading assignment. Pay attention to the differences in the discipline statute in IDEA 2004, when compared to the earlier discipline cases.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p>Read the cases and Written Statements filed by the students so you can act as a Judge during Oral Argument. We will provide you with the list of upcoming cases and links to the Written Statements.</p> <p><b>Read:</b> The Complaint in <i>Draper v. Atlanta Indep. School District</i> at <a href="http://www.wrightslaw.com/law/pleadings/GA.draper.complaint0402.pdf">www.wrightslaw.com/law/pleadings/GA.draper.complaint0402.pdf</a> U.S. District Court decision in <i>J.D. v. Atlanta Public Schools</i> at <a href="http://www.wrightslaw.com/law/caselaw/07/GA.jdraper.atlanta.htm">www.wrightslaw.com/law/caselaw/07/GA.jdraper.atlanta.htm</a> <b>A Lesser Spirit Would Have Been Crushed Long Ago: <i>J.D. v. Atlanta Public Schools</i></b> by Pamela Wright and Peter Wright at <a href="http://www.wrightslaw.com/law/art/draper.aps.comped.htm">www.wrightslaw.com/law/art/draper.aps.comped.htm</a> <b>Poor Man's Burlington Remedy</b> by Steven Wyner, Esq. &amp; Marcy J. K. Tiffany, Esq. at <a href="http://www.wrightslaw.com/law/art/draper.comped.wyner.htm">www.wrightslaw.com/law/art/draper.comped.wyner.htm</a></p> <p><b>Cases:</b> <i>Draper v. Atlanta Indep. Sch. Dist.</i>, 518 F.3d 1275, (11th Cir. 2008) <i>Reid ex rel. Reid v. District of Columbia</i>, 401 F.3d 516 (C.A.D.C.,2005) <i>Heather D. v. Northampton Area Sch. Dist.</i>, 511 F.Supp.2d 549 (E.D. Pa. 2007)</p>
<b>10</b>	<p style="text-align: center;"><b>10/26/09</b> <b>Remedies - Compensatory Education</b> <b>Oral Argument - Round 1</b></p> <p><b>Class Discussion:</b> We will discuss the concept of “Compensatory Education” that may be provided to a student if a school district breaches its obligation to provide FAPE. We will review the preparation and history of <i>Draper</i> (the “2008 Case of the Year”). Be prepared to discuss the facts, issues, holding, and rationale of <i>Draper</i>, <i>Reid</i> and <i>Heather</i>.</p>

	<p><b>Oral Argument:</b> Four cases will be argued before the students. You should read the cases and Written Statements filed by the students so you can act as a Judge during Oral Argument.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> 20 USC § 1415(l)</p> <p><b>Articles</b></p> <p><b>Florida Jury Awards \$600,000 to Parents of Handicapped Child - School District Fails to Provide FAPE, Retaliates Against Parents and Child</b> at <a href="http://www.wrightslaw.com/advoc/articles/news_Whitehead_980403.htm">www.wrightslaw.com/advoc/articles/news_Whitehead_980403.htm</a></p> <p><b>Inside Story of the \$600,000 Verdict in Florida Retaliation Case</b> by Laura Whiteside, Esq. at <a href="http://www.wrightslaw.com/advoc/articles/ltr_whiteside_980606.html">www.wrightslaw.com/advoc/articles/ltr_whiteside_980606.html</a></p> <p><b>Complaint in <i>Porter v. Manhattan Beach Unified Sch. District</i></b> at: <a href="http://www.harborouselaw.com/law/plead/porter.court.complaint.2004.1022.pdf">www.harborouselaw.com/law/plead/porter.court.complaint.2004.1022.pdf</a></p> <p><b>Federal Judge Approves Record \$6.7 Million Settlement in <i>Porter v. Manhattan Beach Unified School District, et. al.</i></b> at <a href="http://www.wrightslaw.com/news/05/porter.settlement.htm">www.wrightslaw.com/news/05/porter.settlement.htm</a></p> <p><b>Cases:</b></p> <p><b><i>Porter v. Manhattan Beach Sch. Dist.</i></b>, 307 F. 3d 1064 (9th Cir. 2002)</p> <p><b><i>Settlegoode v. Portland Public Schools</i></b>, 371 F.3d 503 (9th Cir. 2004)</p> <p><b><i>HH v. Moffett</i></b>, 2009 WL 1931203 (C.A.4 (Va.)) 7/7/09 Unpublished decision at <a href="http://www.wrightslaw.com/law/caselaw/09/4th.hh.v.moffett.pdf">www.wrightslaw.com/law/caselaw/09/4th.hh.v.moffett.pdf</a></p>
<p style="text-align: center;"><b>11</b></p>	<p style="text-align: center;"><b>11/2/09</b></p> <p style="text-align: center;"><b>Remedies - \$\$\$ Damages</b></p> <p style="text-align: center;"><b>Oral Argument - Round 2</b></p> <p><b>Class Discussion:</b> We will discuss the concept of damages in special education litigation and the “exhaustion” requirement. We will review the history of the \$600,000 verdict in <i>Whitehead</i>, the 6.7 Million Dollar settlement in <i>Porter</i>, the one million dollar jury verdict for a special ed teacher in <i>Settlegoode</i>, and the recent decision from the 4<sup>th</sup> Circuit re: waiver of qualified immunity and exposure to punitive damages for two Chesterfield County special education staff. Be prepared to discuss the critical facts that were turning points in each of these cases.</p> <p><b>Oral Argument:</b> Four cases will be argued before the students. You should have read the four cases and the Written Statements filed by the students so you can act as a Judge during Oral Argument.</p> <p style="text-align: center;"><b>Assignment for Next Class</b></p> <p><b>Read</b> the four cases and the Written Statements filed by the students. We will provide you with the list of upcoming cases and links to the Written Statements.</p> <p><b>Read</b> Chapters 10 and 11 in <i>Wrightslaw: From Emotions to Advocacy</i>. (we will provide links)</p> <p>Watch <i>Understanding Your Child’s Test Scores</i>, a Wrightslaw CD-ROM (90 minutes). We</p>

	<p>will provide each student with the training program on CD-ROM. You need to install the WebEx software to view the program. Practice drawing the Bell Curve before next week's class so you can do this during class.</p> <p><b>Watch <i>Surviving Due Process: Stephen Jeffers v. School Board</i></b> DVD video (2 hours). This video is based on an actual case. Six copies are on reserve with the librarian.</p> <p><b>Read Articles</b>  <b>Representing the Special Ed Child: A Manual for Attorneys and Law Advocates</b> by Peter Wright at <a href="http://www.wrightslaw.com/advoc/articles/attorney_manual.html">www.wrightslaw.com/advoc/articles/attorney_manual.html</a>  <b>From Emotions to Advocacy: The Parent's Journey</b> by Pamela Wright at <a href="http://www.wrightslaw.com/advoc/articles/Emotions.html">www.wrightslaw.com/advoc/articles/Emotions.html</a></p>
<p><b>12</b></p>	<p style="text-align: center;"><b>11/9/09</b>  <b>Oral Argument - Round 3</b></p> <p><b>Class Discussion:</b> We will discuss the Due Process DVD. We will review the use of demonstrative evidence using the opposition's data to prove your case.</p> <p><b>Oral Argument:</b> Four cases will be argued. You should have read the cases and the Written Statements filed by the students so you can act as a Judge during Oral Argument.</p> <p style="text-align: center;"><b>Reading Assignment for Next Class</b></p> <p><b>SEL:</b> 20 USC § 1415(i)(3)  <b>Articles and Evaluation:</b>  <b>Using an Expert as an Effective Resource</b> by Jennifer Bollero, Esq. at <a href="http://www.harborouselaw.com/articles/bollero.expert.htm">www.harborouselaw.com/articles/bollero.expert.htm</a>  <b>Preparation of a Psycho-educational Report</b> by Margaret Kay, Ed.D. at <a href="http://www.harborouselaw.com/articles/kay.report.htm">www.harborouselaw.com/articles/kay.report.htm</a></p> <p><b>Download and read Kyle's Evaluation</b>  Go to <a href="http://www.harborouselaw.com/mcgee/">www.harborouselaw.com/mcgee/</a>  User name: kyle  Password: kyle</p> <p>In this subdirectory, you will find a photograph of Kyle and an evaluation by Dr. Brassel.</p> <p>Download and read Dr. Brassel's evaluation. Be prepared to ask Dr. Brassel questions on November 16 about this evaluation. You need to understand Kyle's educational needs and what educational services he required to receive a free, appropriate public education (FAPE) that prepared him for "further education, employment, and independent living."</p> <p><b>Note:</b> Kyle and his parents consented to make this evaluation available to you as a teaching tool. At the end of this class, please destroy the evaluation and any notes with personally identifying information. Please do not discuss Kyle or his case with anyone except your fellow students in this class.</p>

	<p><b>Cases:</b>  <i>Arlington v. Murphy</i>, 548 U.S. 291 (2006) (SEL, page 385)  <i>District of Columbia v. Ijeabuwu</i>, ___ F.Supp.2d ___, 2009 WL 1949118  D.D.C., July 08, 2009  <i>Amherst Bd. of Ed. v. Calabrese</i>, 2008 WL 2810244 (N.D.Ohio), No. 1:07 CV 920 7/21/08</p>
<b>13</b>	<p style="text-align: center;"><b>11/16/09</b></p> <p style="text-align: center;"><b>Expert Witnesses, Expert Witness Fees, Attorneys Fees, Settlements</b></p> <p><b>Class Discussion:</b> We will discuss the use of experts and private sector evaluations. Psychologist and expert witness Dr. Suzanne Brassel (subject to availability) will discuss Psycho-Educational Evaluations, Projective Personality Testing and Kyle’s test data.</p> <p>We will discuss the articles by Psychologist Margaret Kay and attorney Jennifer Bollero. We will discuss the Settlement Agreement article by Steve Wyner and Marcie Tiffany, the attorneys who negotiated the 6.7 Million Dollar Settlement in <i>Porter</i>.</p> <p>We will discuss attorney misconduct in the DC and Ohio cases and what <b>not to do</b> to avoid an award of attorneys’ fees against you.</p> <p style="text-align: center;"><b>Reading Assignment for Next Week</b></p> <p><b>SEL: Chapters 8 and 10</b></p> <p><b>Cases:</b>  <i>Connecticut v. Spellings</i>, 453 F.Supp.2d 459 (D.Conn.,2006)  <i>Ottawa High School v. Spellings</i>, 517 F.3d 922 (7th Cir. 2008)  <i>National Law Center on Homelessness and Poverty, R.I. v. New York</i>, 224 F.R.D. 314 (E.D.N.Y. 2004)</p>
<b>14</b>	<p style="text-align: center;"><b>11/23/09</b></p> <p style="text-align: center;"><b>No Child Left Behind Act; McKinney-Vento Homeless Assistance Act</b></p> <p>We will discuss the No Child Left Behind Act, new legal definitions in NCLB, and the rights of homeless children. Be prepared to discuss the facts, issues, holding, and rationale of the NCLB and McKinney-Vento cases in last week’s reading assignment.</p> <p><b>Reading Assignment for Next Class</b></p> <p>TBA</p>
<b>15</b>	<p style="text-align: center;"><b>11/30/09 (Last Class)</b></p> <p style="text-align: center;"><b>TBA</b></p> <p style="text-align: center;"><b>Exam Review</b></p>