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Disability Laws and K-12 Education

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Research Guides

Disability Laws and K-12 Education

Guide Information

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Description: An overview of disability laws and regulations for K-12 education
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Overview

Education has been an important part of American life since the 1600s, and for centuries children have been able to recieve a publicly-supported primary and secondary education. Numerous pieces of federal legislation were passed in the latter half of the twentieth century to ensure access for all young Americans to a free education. One particular area of concern is how to make sure that this "free appropriate public education" is available to children with disabilities. Laws such as the Education for All Handicapped Children Act, and the more recent Individuals with Disabilities Education Act, were passed in an attempt to ensure that all children would recieve an appropriate free education. Numerous administrative law and judicial cases have interpreted these acts in the ensuing decades, and interest groups and professional associations have formed to help the average citizen recieve the help they need in navigating these processes.

Disclaimer

This research guide is a starting point for a law student or an attorney to research the area of disability law and K-12 education. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

Scope of Topic

This guide provides an overview of disability and education law in the United States over the last thirty years with particular emphasis on K-12 education. The resources provide pertinent legislation, representative case law, secondary materials and Internet resources. Further, the guide explores current issues and emerging trends of the discipline. This guide is intended to assist attorneys and law students with little or no familiarity with this subject matter in gaining a better understanding of the relevant law. In addition, this can serve as a guide for parents, teachers, and administrators who want to access the law underlying any disability education issues they may be facing, and to point them to other entities or organizations that can provide further assistance.

About the Author

Harry Woodworth will graduate from Georgia State University College of Law in May, 2012. Harry is interested in education, bankruptcy, foreclosure, and estate law, and graduated with a Bachelor of Science degree in Public Policy from the Georgia Institute of Technology in May, 2009.

For more information about this guide, please contact Professor Meg Butler at mbutler@gsu.edu.

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Primary Sources

Federal Legislation

There are several key pieces of federal legislation that set the requirements and procedures for ensuring the access of disabled children to a free public education. The text of and other legislative information about these bills is publically accessible at THOMAS, a website of the Library of Congress. The text of the United States Code is available on the website of the Legal Information Institute, a service of the Cornell University Law School.

Education for All Handicapped Children Act, 1975, Public Law 94-142 (text not available on THOMAS)

Code section: 20 USC § 1400 et seq.

First passed in 1975, the EAHCA greatly increased federal funding for disability education, and guaranteed that disabled children had the right to a "free appropriate public education" (FAPE). This law also established the requirement that disabled children be placed in the "least restrictive environment" that would still allow for achievement of educational goals, in order to allow disabled students the opportunity to interact with non-disabled students as much as possible.

Individuals with Disabilities Education Act, 1990, Public Law 101-476

An amendment to the EAHCA, this act (the IDEA), further outlines the definitions of "disability" for the purposes of eligibility, and increases the focus on the protections for the individual. Significantly, the act created the "individualized education program," which is an individualized inquiry into the needs of the student with the disability, to create a personalized educational program and goals. In short, the IEP must meet the educational needs of the child in the least restrictive environment appropriate to that child. The IDEA was passed the same year as the Americans with Disabilities Act.

Individuals with Disabilities Education Improvement Act, 2004, Public Law 108-446

The most recent reauthorization of the IDEA, one of the major purposes of this act was to reconcile it with another major recent piece of education legislation, the No Child Left Behind Act. Some other parts of this act included a pilot program for 3-year (as opposed to annual) IEPs, and provisions relating to evaluation and discipline.

Rehabilitation Act of 1973, Public Law 93-112

Americans with Disabilities Act of 1990, Public Law 101-336

These are the central, wide-reaching federal disabilities laws. In the education context, these acts are important as they extend coverage to private schools and post-secondary education.

Regulations

The Department of Education promulgates the regulations interpreting the IDEA. These can be found in title 34, the general title on education, of the Code of Federal Regulations. The most recent version of this title was published on July 1, 2011, and can be accessed on the website of the Government Printing Office. The next publication of this title is expected to come on July 1, 2012.

Before codification in the CFR, proposed and final regulations can be found in the Federal Register, updated daily (with the exception of holidays).

Case Law - Least Restrictive Environment

Roncker on behalf of Roncker v. Walter, 700 F.2d 1058. 6th Circuit (1983); also followed by the 1st, 2nd, 4th, and 8th Circuits

The parent brought an action against defendants, a superintendent and a school district, challenging the placement of her retarded son under the Education for All Handicapped Children Act of 1975, 20 U.S.C.S. § 1401 et seq.A lower court found in favor of the school district, and the parent appealed. The court reversed and remanded the lower court's judgment. The court found that the lower court erred in reviewing the school district's placement decision under an abuse of discretion standard. The court further found that the proper standard of review required a de novo review but that the lower court should give due weight to the state administrative proceedings in reaching its decision. Because the lower court employed an improper standard of review, the court remanded the case in order to allow the lower court to re-examine the mainstreaming issue in light of the proper standard of review. The court found no bar to class actions in the Act. The court concluded that the parent should have been given an opportunity to argue that there was sufficient evidence to justify class certification, at least as to certain issues.

Daniel R.R. v. State Board of Education, 874 F.2d 1036, 5th Circuit (1989); also followed by 3rd and 11th Circuits

Parents of a handicapped 6 year old boy sought to mainstream him into public kindergarten, however, the school district determined that he should not continue to be mainstreamed after his first year. The parents filed the present action against the school district, asserting violations of the Education of the Handicapped Act (EHA), but the district court dismissed the action. The court affirmed, holding the procedural requirements of the EHA had been met and that the substantive claims failed. The court noted this issue was not moot because it was capable of repetition, yet evading review. The EHA required a continuum of alternative placements for the needs of handicapped children, including mainstreaming, but left the details of the education to state and local officials. The court announced a two part test for determining compliance with mainstreaming: 1) could education in the regular classroom be achieved; and 2) if not, has the child been mainstreamed to the maximum extent possible? Applying this fact specific inquiry, the court found that the school system had mainstreamed the child to the maximum extent possible.

Sacramento v. Rachel H. - 14 F.3d 1398, 9th Circuit (1994)

Appellant school district attempted to remove appellee, a mildly retarded student, from full-time participation in a regular classroom and divide placement between regular and special education classes. A hearing officer found that appellee student should be mainstreamed under the Individuals with Disabilities Act (IDEA). The district court affirmed. On appeal, the court affirmed, holding that the district court did not err in developing and applying a test for placement of appellee under IDEA's requirements, 20 U.S.C.S. § 1412(5)(b), or in its findings where it concluded that appellee derived more educational benefit from the regular classroom and made progress toward Individualized Education Program goals. The district court correctly found that the non-academic benefits of improved self-confidence and social skills weighed in appellee's favor; that appellee did not have a detrimental effect on the regular classroom because she did not require too much of her teacher's attention; and that appellant had not shown that the cost of educating

appellee in a regular classroom would be significantly more than the cost of special education.

LRE Tests, in brief

Roncker - consider:

- Benefits the child would recieve in special education classes compared to those in regular education
- Disruptive effect of placing child in regular education
- "Cost" of mainstreaming
- "Portability test" - if the services that make a more restrictive setting superior can be transferred to a less restrictive setting, such modification may be required

Daniel R.R. test - four factors:

- Steps school district has taken to accommodate the child in a regular classroom
- Whether the child will receive an educational benefit from regular classroom (as compared to special education)
- Child's overall educational experience in regular education
- Effect the disabled child's presence has on the regular classroom; if the cost is so significant that it impacts the quality of other childrens' education, the setting may not be appropriate

Rachel H. test - consider:

- Educational benefits of placement full-time in a general education classroom
- Non-academic benefits of such placement
- Effect student has on the teacher and other children in the class
- Costs of mainstreaming the student

Case Law - United States Supreme Court

This is a selection of the most important federal court cases that have been handed down, interpreting federal K-12 disability education laws. Text of the opinions listed here, and in the "Least Restrictive Environment" section can be found through various sources, including Westlaw and LexisNexis. They can also be found in the United States Reports, the official records of the Supreme Court of the United States. Appellate court decisions can be found in the Federal Reporter. A print copy of the US Reports and the Federal Reporter can be found in the law library at Georgia State University. Included under each case name (with the exception of the first listed case) is the LexisNexis case summary. NOTE: these summaries are a product of LexisNexis and are not legal text.

Mills v. Board of Education of the District of Columbia - 348 F. Supp. 866, D. D.C. (1972)

This case predates the legislation discussed in this guide, and unlike the other cases mentioned does not come from the Supreme Court or Courts of Appeals. It is notable for the holding that educational services are to be provided based on the child's needs, not the school system's financial ability to provide such services.

"Free appropriate public education"

Board of Education of Hendrick Hudson Central School District v. Rowley - 458 US 176 (1982)

The lower courts had interpreted the Act to mean that the school district had to provide an interpreter for the student, who was deaf, because having an interpreter would maximize the student's educational potential. The school district argued that the Act did not require this level of services. The Court reversed and remanded the case. In doing so, the Court held that (1) the lower courts erred when they held that the act required states to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children; (2) the evidence firmly established that the student was receiving an adequate education because she performed better than the average child in her class and easily advanced from grade to grade; and (3) insofar as the school district was required to provide a handicapped child with a "free appropriate public education," it had satisfied that requirement by providing personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction.

Related Services

Cedar Rapids Community School District v. Garret F. - 526 US 66 (1999)

Respondent student, who was paralyzed from the neck down, attended school within petitioner school district. Respondent depended on a ventilator for life support. Respondent's mother asked petitioner to pay for the health care services that respondent needed to attend school. The court initially noted that under the Individuals with Disabilities Act, 20 U.S.C.S. § 1400 et seq., states received federal funds to provide disabled children with special education and related services. Petitioner argued that the related services that were required by 20 U.S.C.S. § 1401(a)(17) did not include continuous one-on-one nursing services during the school day. The court stated that under its prior interpretation, the medical services exclusion applied only to services that must be performed by a physician. The court found that respondent's need for in-school services could be provided by a school nurse. In addressing petitioner's financial concerns, the court determined that cost was not a statutory factor in the definition of related services or excluded medical services. The court declined to engage in judicial lawmaking through adoption of a cost-based standard.

Stay-put Provision

Honig v. Doe - 484 US 305 (1988)

Two handicapped students had been suspended for misconduct related to their disabilities. The students maintained that their indefinite suspension in aid of expulsion constituted a prohibited "change in placement" under 20 U.S.C.S. § 1415(e)(3), the "stay-put" provision of the EHA, under which a child whose placement was under review was to remain in his current placement pending completion of review unless the parents and school agreed otherwise. The appellate court agreed and required the state to provide services directly if the local school could not; it also ruled that a 30-day suspension would not violate § 1415(e)(3). On appeal, the court modified the order to provide that a 10 day suspension did not violate § 1415(e)(3) and otherwise affirmed the judgment. The court held that under § 1415(e)(3), state or local school authorities could not exclude disabled students from the classroom during the pendency of proceedings to review decisions concerning their education, for dangerous or disruptive conduct that grew out of the students' disabilities. Moreover, a court had power to order the state to provide services if the local school could or would not. Finally, a suspension greater than 10 days constituted a "change in

placement" prohibited by 1415(e)(3)

Remedies & Reimbursement

School Committee of Burlington v. Massachusetts Board of Education - 471 US 359 (1985)

Parents' son was handicapped within the meaning of the Act. Thus, he was entitled to receive at public expense specially designed instruction and transportation. Ultimately, the parents placed their child in a private school. The BSEA ordered the town to pay for the student's tuition and transportation. The town brought an action for judicial review of the BSEA. The district court ordered the parents to reimburse the town for its payments. The lower court remanded. On a grant of certiorari, the Court affirmed. The Act authorized the power to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determined that such placement, rather than an individualized education program (IEP), was proper under the Act. Parental violation of 20 U.S.C.S. § 1415(e)(3) did not constitute a waiver of reimbursement. Parents who unilaterally changed their child's placement during the pendency of review proceedings, without consent, did so at their own financial risk, as they were barred from obtaining reimbursement if the IEP was ultimately appropriate.

Florence County School District Four v. Carter - 510 US 7 (1993)

Petitioner parents filed suit under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1400 et seq., claiming that respondent school district breached its duty to provide the student with a free appropriate public education and seeking reimbursement for tuition and costs from a private school. The district court ruled in petitioners' favor and the appeals court affirmed. On appeal, the court affirmed and held that a court could order reimbursement for parents who unilaterally withdrew their child from a public school that provided an inappropriate education under IDEA and put the child in a private school that provided an education that was otherwise proper under IDEA, but did not meet all the requirements of 20 U.S.C.S. § 1401(a)(18). The court found that equitable considerations were relevant in fashioning relief and the court enjoyed "broad discretion" in so doing. Courts fashioning discretionary equitable relief under IDEA had to consider all relevant factors, including the appropriate and reasonable level of reimbursement that were required.

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Secondary Resources

American Law Reports

The American Law Reports are a resource first published in 1919, and are updated weekly to include new relevant cases. ALR reports are indepth studies of a discrete area of law and cover many different topics, including education and disability law. ALR articles are available on Westlaw, and in the Georgia State University Law Library. Listed below are a sample of articles on core disability education concepts. Date listed is year of original publication.

Anne K. Wooster, "What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400 et seq.)," 161 ALR Fed. 1 (2000)

Kurtis A. Kemper, "Construction and Application of Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 et seq. - Supreme Court Cases," 13 ALR Fed. 2d 321 (2006)

Kurtis A. Kemper, "Jurisdiction of Court to Award Attorney's Fees as Part of Costs Under Individuals with Disabilities Education Act, 20 U.S.C.A. § 1415(i)(3)(B)," 27 ALR Fed. 2d 341

John E. Theuman, "Obligation of public educational entities, under Individuals With Disabilities Education Act (20 U.S.C.A. §§ 1400 et seq.), to pay tuition costs for students unilaterally placed in private schools - post-Burlington," 152 ALR Fed. 485 (1999)

Brian J. Porto, "Availability of Damages in Action to Remedy Violations of Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400 et seq.)," 165 ALR Fed. 463 (2000)

Brian J. Porto, "Application of 20 U.S.C.A. §§ 1412(a)(5), Least Restrictive Environment Provision of Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 et seq.," 189 ALR Fed. 297

Mary L. Topliff, "Remedies available under Americans with Disabilities Act (42 U.S.C.A. §§ 12101 et seq.)," 136 ALR Fed. 63 (1997)

Legal Encyclopedias

American Jurisprudence and Corpus Juris Secundum are legal encyclopedias covering a wide range of subjects. They serve as excellent and accessible overviews of legal topics. They can be found on WestLaw and LexisNexis and in print in the Georgia State University Law Library.

67B Am.Jur. 2d *Schools* §§399 - 430 (2012)

78A C.J.S. *Schools and School Districts*, §§ 1 et seq., §§ 995-1003 (2012)

Treatises

Like legal encyclopedias, treatises are an excellent overview of the law, but treatises are even more topic-specific than sources like American Jurisprudence. Therefore, they often go into more depth into the covered topic. The law library at Georgia State University recommends two treatises on education law, both of which have dedicated sections on disability laws. Product information comes, with minimal editing, from the source of the treatise.

Education Law, James A. Rapp; first published 1984, last update December 2011.

Available through LexisNexis.

Product description: "*Education Law* is a nationally oriented work in a vital area of the law. An indispensable reference for attorneys who represent persons having a grievance against

educational institutions, and attorneys representing such institutions, as well as school board members and administrators."

Education Law: First Amendment, Due Process, & Discrimination, Ronna Greff Schneider, last update August 2009.

Available through Westlaw.

Product description: This two volume publication analyzes students' and teachers' freedom of religion and speech in public schools as well as the restraints on those freedoms. It also discusses school discipline and violence as they relate to due process, and deals with issues of inclusion and equality in regard to: gender, race, and students with disabilities. The book also offers several helpful appendices, including selected statutes, sample pleadings, and forms.

Journal and Law Review Articles

Gary L. Monserud, Article, *The Quest for a Meaningful Mandate for the Education of Children with Disabilities*, 18 St. John's J.L. Comm. 675 (2004)

Andrea Valentino, Note, *The Individuals with Disabilities Education Improvement Act: Changing What Constitutes an "Appropriate" Education*, 20 J.L. & Health 139 (2006/2007)

Scott Goldschmidt, Comment, *A New Idea for Special-Education Law: Resolving the "Appropriate" Educational Benefit Circuit Split and Ensuring a Meaningful Education for Students with Disabilities*, 60 Cath. U.L. Rev. 749 (2011)

Least Restrictive Environment

Megan Roberts, Comment, *The Individuals With Disabilities Education Act: Why Considering Individuals One at a Time Creates Untenable Situations for Students and Educators*, 55 UCLA L. Rev. 1041 (2008)

Stacey Gordon, Article, *Making Sense of the Inclusion Debate under IDEA*, 2006 BYU Educ. & L. J. 189 (2006)

Allen Kickertz, Article: *Holistic Learning: Amending the* Rowley *test to Clarify the Inclusion Debate*, 29 W. New Eng. L. Rev. 733 (2007)

Theresa M. DeMonte, Comment, *Finding the Least Restrictive Environment for Preschoolers Under the IDEA: An Analysis and Proposed Framework*, 85 Wash. L. Rev. 157 (2010)

Conor B. McDonough, Note, *The Mainstreaming Requirement of the Individuals with Disabilities Education Act in the Context of Autistic Spectrum Disorders*, 35 Fordham Urb. L.J. 1225 (2008)

Sarah E. Farley, Notes and Comments, *Least Restrictive Environments: Assessing Classroom Placement of Students with Disabilities under the IDEA*, 77 Wash. L. Rev. 809 (2002)

Individualized Education Plan

Michael Metz-Topodas, Comment, *Testing - The Tension Between the No Child Left Behind Act and the Individuals with Disabilities Education Act*, 79 Temp. L. Rev. 1387 (2006)

Monica Aguon, Comment, *Equal Protection for the Gifted Student in the Public School System*, 12 Scholar 443 (2010)

David Ferster, Article, *Broken Promises: When Does a School's Failure to Implement an Individualized Education Program Deny a Disabled Student a Free and Appropriate Public Education*, 28 Buff. Pub. Interest L.J. 71 (2009-2010)

Jennifer R. Rowe, Article, *High School Exit Exams Meet IDEA - An Examination of the History, Legal Ramifications, and Implications for Local School Administrators and Teachers*, 2004 BYU Educ. & L. J. 75 (2004)

Remedies & Reimbursement

Stacy Lynn Sheon, Comment, *Opening the Doors to a Quality Public Education for Children with Disabilities or Slamming Them Shut: A Critique of the Supreme Court's Treatment of Private-Tuition Reimbursement Under the IDEA [Forest Grove School District v. T.A., 129 S. Ct. 2484 (2009)]*, 49 Washburn L.J. 599 (2010)

Heather J. Russell, Note, Florence County School District Four v. Carter: *A Good "IDEA"; Suggestions for Implementing the* Carter *Decision and Improving the Individuals wit hDisabilities Education Act*, 45 Am. U.L. Rev. 1479 (1996)

Lewis M. Wasserman, Article, *Reimbursement to Parents of Tuition and Other Costs under the Individuals with Disabilities Education Improvement Act of 2004*, 21 St. John's J.L. Comm. 171 (2006)

Books

There have been many books published on education law generally, and the specific topic of disability law in the education context. I've attempted to put together a list that will provide a diverse selection of readings, and that have been relatively recently published and are available through the law library at Georgia State University.

- Special Education Law by Peter S. Latham; Patricia Horan Latham; Myrna R. Mandlawitz
  ISBN: 9780205479757
  Publication Date: 2007-07-23
- Case Studies in Special Education Law by Mary Konya Weishaar
  ISBN: 9780132186285
  Publication Date: 2006-09-27
- Education for All by Terese C. Jimenez (Editor); Victoria L. Graf (Editor); Michael M. Gerber (Foreword by)
  ISBN: 9780787995225
  Publication Date: 2008-02-12
- The Praeger Handbook of Special Education by Alberto Marcos Bursztyn (Editor)

ISBN: 0313332622
Publication Date: 2007-07-01

- Making a Difference by Craig R. Fiedler
  ISBN: 0205306292
  Publication Date: 1999-12-21
- Building Transitional Programs for Students with Disabilities by Christy Mahanay-Castro
  ISBN: 9781607099994
  Publication Date: 2010-11-16
- The Complete IEP Guide by Lawrence Siegel
  ISBN: 9781413313130
  Publication Date: 2011-03-22
- Special Education Law by Laura F. Rothstein
  ISBN: 0801319617
  Publication Date: 1999-11-16
- The Law of Disability Discrimination by Ruth Colker
  ISBN: 9781422473269
  Publication Date: 2009-07-01

Blogs

Law blogs can be an excellent source for immediate reaction and analysis of new cases, regulations, and emerging trends in various fields of law. This is in contrast with some other secondary sources listed here, which often take months to be written and published. Of course, on the other hand blog posts don't go through the same process of critical review. Here are a selection of blogs that are regularly updated, and

Special Education Law Blog - Jim Gerl

The Wrightslaw Way

Special Education Advisor

Special Education Law Blog - Charles P. Fox

Computer Research

Some useful search terms for both Westlaw and LexisNexis were:

least restrictive environment, individualized education inquiry, disability education, mainstreaming, Individuals with Education Act

While it may seem simple, common everyday search engines such as Google can be very useful for finding information. Of course, discretion and critical evaluation must be used to properly weigh the credibility of information found on non-legal and non-academic sites.

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Associations and Interest Groups

Federal Agencies and Professional Associations

United States Department of Education Office of Special Educational and Rehabilitative Services

OSERS is the primary unit of the Department of Education devoted to special education. Under OSERS, the Office of Special Education Programs "provides leadership and fiscal resources to assist State and local efforts to educate children with disabilities in order to improve results for those children and to ensure equal protection of the law."

Disability.gov

A federal government website featuring information and resources on many different disability-related topics, including education.

American Bar Association Commission on Disability Rights

Features a frequently updated twitter feed, disability law news, and resources. The ABA Journal also regularly features news and articles on education law, and as a topic header devoted to the subject for ease of organization.

Law School Programs

Georgia State University College of Law - Center for Law, Health, and Society

Center for Health Law Studies at Saint Louis University

University of Maryland's Francis King Carey School of Law - Law and Health Care Program

Georgetown University O'Neill Institute for National and Global Health Law

Interest Groups

Autism Speaks - website

National Education Association - Special Education

Council of Parent Attorneys and Advocates (COPAA)

Association on Higher Education and Disability (AHEAD)

National Parents Council - Special Education Group

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