CHAPTER 2

Statutes, Regulations, Commentary, and Caselaw

In this chapter, you will learn about statutes, regulations, commentary to the regulations, and caselaw. You will learn about legislative intent and how law evolves through judicial interpretations. You will also learn why it is important to do your own legal research.

Congress enacted Public Law 94-142 in 1975. The statute was known as the Education for All Handicapped Children Act. Over the years, the Act was amended and renamed. The last revision enacted by Congress on November 19, 2004 is known as the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). The President signed the Act into law on December 3, 2004. IDEA 2004 went into effect on July 1, 2005.

When Congress reauthorized the Individuals with Disabilities Education Act in 2004, they made significant changes to the law. **Purposes** is the most important statute because it is the mission statement. The Purpose is:

> . . . 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** . . . [and] to ensure that the rights of children with disabilities and parents of such children are protected . . . [1]

The authorization of any new law brings about a spate of interpretations and questions. Self-styled experts may spread wrong interpretations, misinformation and disinformation. Do not rely on the opinions of others or advice you may read in articles.

To find answers to your questions about the Individuals with Disabilities Education Act, *you need to do your own legal research*. The intention of this book is to bridge the gap between the law and one's understanding of the legal language within it, in an accurate, objective manner and through direct reference to the law itself.

In this book, you will read the law. In the beginning, this is more difficult than reading articles about the law or having the law explained to you. As you continue to read and become accustomed to the language and structure of the law, the law itself will become more meaningful to you. When you learn how the law is organized, you can quickly find sections or regulations that are relevant to your questions.

Statutes

Individuals with Disabilities Education Act

Statutes are laws passed by federal, state and local legislatures. The original federal special education law was "The Education of All Handicapped Children Act." When Congress reauthorized the law in 2004, they renamed it as "The Individuals with Disabilities Education Improvement Act of 2004."[2]

Congress first publishes a law as an "Act" in the *Statutes at Large,* then organizes laws by subject in the *United States Code* (U. S. C.) The Individuals with Disabilities Education Act is printed in the *Statutes at Large* and in the *United States Code*. The numbering system used to categorize an *Act* in the *Statutes at Large* is different from the system used in the *United States Code*.

1 20 U. S. C. §1400(d)

2 IDEA 2004 is Public Law 108-446 and is cited as Pub. L. 108-446

The *United States Code* has fifty subject classifications called Titles. For example, Title 20 is about education, Title 26 is the Internal Revenue Code, and Title 42 is about public health and welfare. In each title, laws are indexed and assigned section numbers. The Individuals with Disabilities Education Act is cited as 20 U. S. C. § 1400, *et seq*.[3] Statutes published in the *Statutes at Large* have sections (section 1, 2, 3, 4, etc.) and may have subsections (i.e., (a), (b), (c), (d)).

The "Act" begins with Section 600. When the Act is published in the *United States Code* (U. S. C.), the numbers change. IDEA 2004 is in Title 20 of the *United States Code,* beginning with Section 1400. For example, "Definitions" are in Section 1401 of the *United States Code* (cited as 20 U. S. C. § 1401) and are in Section 602 of "the Act."

Other Federal Statutes

Other important federal education statutes are:

- The No Child Left Behind Act of 2001, a reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) which begins at 20 U. S. C. § 6301 *et seq*.
- Section 504 of the Rehabilitation Act of 1973 which begins at 29 U. S. C. §794 *et seq.*
- The Family Educational and Rights and Privacy Act which begins at 20 U. S. C. § 1232 *et seq*.
- The McKinney-Vento Homeless Assistance Act which begins at 42 U. S. C. § 11431 *et seq*.

States must ensure that their statutes and regulations are consistent with the *United States Code* (U. S. C.) and the *Code of Federal Regulations* (CFR). While state statutes and regulations may provide more rights than federal laws, they cannot provide fewer rights than guaranteed by federal law. If a state law or regulation is in direct conflict with a federal law, the federal law controls, pursuant to the "Supremacy Clause" of the U. S. Constitution.

Regulations

The U. S. Department of Education develops and publishes the federal special education regulations. Regulations clarify and explain the United States Code. A regulation must be consistent with the United States Code and has the same force of law. Before the Department publishes the regulations, the agency must publish the proposed regulations in the *Federal Register* (F. R.) and solicit comments from citizens about the proposed regulations. The special education regulations are published in Volume 34, Part 300 of the Code of Federal Regulations. The legal citation for the regulations is 34 CFR § 300.

Commentary to the Regulations

When the Education Department published the regulations for IDEA 2004, they included an "Analysis and Commentary" with the document. In the Commentary, the Department described the comments they received about the proposed regulations and what changes were made.

In the Commentary, terms, definitions and requirements are described and explained in clear language.[4] When you read a regulation, these comments will help you understand why the Department used specific language. In earlier reauthorizations of the Individuals with Disabilities Education Act, the Education Department published a Question and Answer Appendix to the Regulations that answered questions about IEPs and other issues. The IDEA 2004 Regulations do not include such an Appendix. However, the Commentary will help you understand the different perspectives and interpretations that can be made about a regulation.

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3 *et seq*., an abbreviation of the Latin phrase *et sequentia* meaning "and the following ones," is a legal term indicating that a writer is citing a page and the pages that follow.

4 Download portions of the Commentary from Wrightslaw.

Judicial Interpretations and Caselaw

Evolving Caselaw

Caselaw is always changing and evolving. The Individuals with Disabilities Education Act will continue to evolve and be re-defined by caselaw. Special education litigation usually starts with a special education due process hearing. In some states, the losing party can appeal directly to state court or federal court. In other states, the appeal is initially for a review hearing, then an appeal to court.

State courts and federal courts are different judicial systems. In general, after a case is filed in state or federal court, it remains within that system. For example, cases filed in state court remain within the state court system while cases filed in U. S. District Courts generally remain in the federal court system. A state court case may be "removed" to federal court and a federal case may be remanded back to state court.

When a state court issues a decision, the decision may be appealed to a higher state court. For example, a Virginia trial judge's interpretation of a statute is governed by earlier rulings from the highest state court in Virginia. The highest state court is usually the state Supreme Court. In general, a party who loses in state court cannot appeal to the federal court, but must follow the appellate process outlined in the state's judicial system.

Federal judges are bound by rulings of their Circuit Court of Appeals. There are twelve circuit courts.[5] For example, Virginia, Maryland, North Carolina, South Carolina, and West Virginia are in the Fourth Circuit. A U. S. District Court judge in those states must follow rulings from the United States Court of Appeals for the Fourth Circuit. The judge is not required to follow legal rulings from other circuits, although these opinions may be cited as persuasive authority.

All state and federal courts must follow rulings issued by the U. S. Supreme Court. If the U. S. Supreme Court issues a ruling with which Congress disagrees, Congress may enact a new law to change the impact of a decision of the Supreme Court.

Legislative Intent

Judges often look at legislative history and legislative intent when they analyze the meaning of a statute. When you read decisions by the U. S. Supreme Court,[6] you will see that the Justices often discuss legislative history and legislative intent in their decisions. Legislative intent is usually found in Committee Reports, transcripts of debates in the *Congressional Record* and other sources.[7]

Legal Interpretations

Law is always subject to different interpretations. Attorneys and judges will interpret a section of the law differently, depending on their perspectives. If you read an article about special education law, the interpretations and conclusions are likely to represent the opinions of the author. If you read the law and regulations on your own, you will form your own interpretations and conclusions about the law and the impact it is likely to have on you.

Compelling facts may cause a judge to want to rule in one direction, even if the ruling is contrary to current caselaw. The decision-maker in this situation will often find and use unique facts in the case to create an exception to general caselaw. These "exceptions to the rule" decisions cause the body of law to change and grow.

How a court interprets a law or regulation may be dictated by a single word, for example, "may" instead of "shall." When Congress wants to pass a bill but cannot agree on the wording of a statute, compromise is achieved by using vague language. Vague and confusing words or phrases lead to litigation. For example, in special education law, the term "appropriate education" has been litigated for more than thirty years.

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5 To find out what circuit your state is in, go to www.uscourts.gov/images/CircuitMap.pdf

6 Section Four includes key decisions in special education cases by the U. S. Supreme Court.

7 Find legislative information at http://thomas.loc.gov/

Over time, when courts agree on the same interpretation, a majority rule evolves. A minority rule may also develop. If a majority rule does not develop, the legal issue becomes more confusing. U. S. Courts of Appeal in different circuits around the country often issue conflicting rulings, leading to a "split among circuits." When there is a split among circuits, the U. S. Supreme Court may agree to hear the case to clarify the issue and resolve the split.

Legal Research

When you research a special education legal issue, you should study:

- United States Code
- State and Federal Regulations
- U.S. Department of Education's Analysis and Commentary about the Regulations
- Judicial decisions and caselaw

If you have questions about a legal issue, read the United States Code section related to your issue. Next, read the regulation that discusses or clarifies your issue. Read the Commentary to understand the disputed issues about a regulation. Expect to read the Code and regulation several times. Then find out if there are any cases about your legal issue.[8]

If you find cases about your issue, read the earlier decisions first, then tackle the recent decisions. If you know a case was appealed, read the earlier decision that was appealed and reversed (or appealed and affirmed). When you read earlier decisions, you will see how law in that area is evolving. For every position taken by one court that the law is clear, another court is likely to interpret the law differently and arrive at a different opinion. This is the nature of law.

Legal Citations

References to law are called legal citations. Legal citations are standardized formats that explain where you will find a particular statute, regulation, or case. When you see a legal citation such as 20 U. S. C. § 1400 *et seq*., the term "*et seq*." means beginning at Section 1400 and continuing thereafter.

In the *United States Code*, "Findings and Purposes" are in Section 1400 of Title 20. The legal citation for Findings and Purposes is 20 U. S. C. § 1400. You may refer to Findings and Purposes as "20 U. S. C. § 1400" or "Section 1400." In ***Wrightslaw: Special Education Law, 2nd Edition,*** legal citations do not include the Title. For example, the full legal citation for the law about IEPs is 20 U. S. C. § 1414(d). In most cases, the authors will use a simpler format for citations, such as Section 1414(d).

In Summation

In this chapter, you learned about statutes, regulations, commentary, and caselaw. You learned about legal research, legislative intent, judicial interpretations and how law evolves. The next chapter, ***A Short History of Special Education Law***, will give you an overview of the history and traditions associated with public schools and special education, and the impact of landmark legal decisions about discrimination.

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8 Selected special education cases are in the Wrightslaw Caselaw Library at http://www.wrightslaw.com/caselaw.htm

Good sources of legal information are Findlaw.com, Versuslaw.com, and the *Individuals with Disabilities Education Law Reporter* (*IDELR*) and other publications by LRP. Many cases are not available online and must be located in a court, academic law library, or *IDELR*.