CHAPTER 1

Introduction

The reauthorized Individuals with Disabilities Education Act of 2004 is confusing to most parents, educators, related services providers, and even to many advocates and attorneys. Ignorance of the law can be as damaging as the child's disability.

What Changed in IDEA 2004?

What are the requirements for highly qualified special education teachers? How can special education teachers meet the highly qualified teacher requirements?

What does the Individuals with Disabilities Education Act say about child find? Are children who attend private schools and charter schools entitled to special education and related services? What does the law say about least restrictive environment and inclusion?

What does the law say about evaluations, reevaluations and parental consent? What does the law say about the use of discrepancy formulas and Response to Intervention (RTI) to identify children with specific learning disabilities?

What does the law say about Individualized Education Programs (IEPs) and IEP teams? Transition plans? How did the law about reviewing and revising IEPs change? Which IEP Team members may be excused from IEP meetings, and under what circumstances? What are "multi-year IEPs"?

What are early intervening services and who is eligible for early intervening services? What does the law say about who must be tested on state and district assessments? Who is entitled to accommodations? Who is eligible to take an alternate assessment? Who makes decisions about assessments?

What does the law say about Independent Educational Evaluations and parental access to educational records? What changes were made to procedural safeguards notice, prior written notice, and the new due process complaint notice? What are the new requirements and timelines for due process hearings? Resolution sessions? Qualifications of hearing officers? How did the law about attorneys' fees change?

What does the law say about discipline? Manifestation review hearings? Who has the authority to decide that a child will be placed in an interim alternative educational setting? For how long? What does the law say about functional behavioral assessments and behavior intervention plans?

Wrightslaw: Special Education Law, 2nd Edition will help you find answers to your questions in the Individuals with Disabilities Education Act of 2004 and other federal education laws.

Who Should Read This Book?

If you are the parent of a child with a disability, you represent your child's interests. To effectively advocate for your child, you need to learn about your child's rights, your rights and responsibilities under the Individuals with Disabilities Education Act, and how the law will affect your child's education.

If you work as a teacher, related services provider, or school administrator, the Individuals with Disabilities Education Act of 2004 will have a profound impact on you and your job. You may receive conflicting information and advice about this law. You need to know what the law actually says.

If you teach special education, school psychology, school administration, or education law courses, your students need to know how to find answers to their questions about what the law requires of them. If you are

an employee of a state department of education, you may be responsible for investigating complaints, collecting data, or other activities to improve educational results for children with disabilities. You need to be aware of new requirements in IDEA 2004 that will affect your work.

If you are an attorney or advocate who represents children with disabilities, you need to have the Individuals with Disabilities Education Act of 2004 on your desk, in your briefcase, and in your computer.

Wrightslaw: Special Education Law, 2nd Edition is the instruction manual for bringing more than 90 percent of children with disabilities up to grade level.[1]

How This Book is Organized

Wrightslaw: Special Education Law, 2nd Edition is organized into five sections.

Section One is **Learning About the Law**. This section includes an overview of law, how law evolves, and background information about special education and the Individuals with Disabilities Education Act. Chapter 2 is **Statutes, Regulations, Commentary to the Regulations and Caselaw**. You will learn about legislative intent, how law evolves, and why it is important that you do your own legal research. Chapter 3 is **History of Special Education**. In this chapter, you learn about the evolution of public education and special education and several landmark discrimination cases that led Congress to enact Public Law 94-142 in 1975.

Section Two is the **Individuals with Disabilities Education Improvement Act of 2004**. Chapter 4 is an **Overview of IDEA 2004** that describes how the law is organized and new requirements in the reauthorized statute. Chapter 5, the **Individuals with Disabilities Education Improvement Act of 2004**, begins with a Table of Statutes, followed by the full text of the the Individuals with Disabilities Education Act, with commentary, cross-references and strategies. You will find the **IDEA 2004 Regulations** in Chapter 6.

Section Three is **Other Federal Education Statutes**. Chapter 7, **Section 504 of the Rehabilitation Act**, explains how Section 504 differs from the Individuals with Disabilities Education Act. Section 504 relates to accommodations and modifications and improved building accessibility to provide access to education. Chapter 8, **No Child Left Behind**, provides requirements for highly qualified special education teachers, annual proficiency testing, research-based reading programs, and the legal definitions of reading, scientifically based reading research, diagnostic reading assessments, and the essential components of reading instruction. Chapter 9, the **Family Educational Rights and Privacy Act,** is about privacy and confidentiality, access, amendment, and destruction of education records. Chapter 10, the **McKinney-Vento Homeless Assistance Act,** requires all school districts to ensure that all children whose families are homeless have access to school. This chapter includes highlights from the McKinney-Vento Act, including the requirement that school districts *shall* make decisions in the best interest of the child.

Section Four is **Special Education Caselaw**. Chapter 11 is **An Overview of Special Education Caselaw**. In this chapter, you learn about special education cases decided by the United States Supreme Court. Chapter 12 is the **Special Education Law Casebook**. This chapter includes the full text of eight decisions from the U. S. Supreme Court. As you read these decisions, you will see how issues have changed since the Supreme Court issued its first decision in 1982.

Section Five, **References and Resources,** includes two Appendices and the Bibliography. Appendix A is a **List of Resources and References** on topics in the Individuals with Disabilities Education Act and other federal education laws. Appendix B is a **Glossary of Special Education Acronyms, Abbreviations and Terms**. Following the appendices are a **Bibliography** and a comprehensive **Index**.

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1 See the No Child Left Behind regulation about alternate assessments in the *Federal Register* (December 9, 2003) at www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.pdf (Retrieved October 11, 2006)

Strategies to Help You Use This Book

Wrightslaw: Special Education Law, 2nd Edition includes the full text of the IDEA statute and regulations. The authors used **bold type** to emphasize important words and phrases in the statutes. Commentary and cross-references are in footnotes.

Look at the example below. The statute begins with (d) Purposes.

> **(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,**[2] **employment, and independent living**;[3]

The authors used bold type to draw your attention to the phrase "**unique needs and prepare them for further education, employment and independent living.**" The footnotes (see below) are commentary by the authors.

Additional Documents

We encourage readers to download additional documents that will help to answer your questions. You may also want to print these documents and attach them to this book.

Federal Regulations

On August 14, 2006, the Department of Education published the Final Regulations for IDEA 2004 in the *Federal Register (*page 46540 to page 46845). The IDEA regulations are in Chapter 6 of ***Wrightslaw: Special Education Law, 2nd Edition***.

Analysis and Commentary

In earlier reauthorizations of the Individuals with Disabilities Education Act, the Education Department published Appendices that answered questions about IEPs and other issues. The Education Department did not publish an Appendix of questions and answers with the IDEA 2004 regulations. However, they did publish an "Analysis of Comments and Changes" (Commentary) to the regulations. The Commentary in the *Federal Register* begins at page 46547 and continues through page 46743.

The Commentary provides definitions and discussions of legal terms in the IDEA 2004 statute and regulations, and often clarifies the "plain meaning" of a term. If you are doing legal research or looking for the answer to a specific question, the Commentary will be an invaluable resource.

You can download the full text of the Commentary as one document or as eight files on different topics from www.wrightslaw.com/idea/commentary.htm

Model Forms

When Congress reauthorized the IDEA, they required the Education Department to develop and publish model IEP, Procedural Safeguard Notice, and Prior Written Notice forms. When the Education Department

2 The phrase "further education" is new in IDEA 2004, as is the emphasis on effective transition services. Section 1400(c)(14) describes "effective transition services to promote successful post-school employment or education."

3 Purposes in Section 1400(d) is the mission statement of IDEA. The purpose of special education is to prepare children with disabilities for **further education, employment, and independent living**. In developing IEPs, use this "mission statement" as your long-term goal.

published the federal special education regulations on August 14, 2006, they published these model forms. We encourage you to download, print and read these forms.

Individualized Education Program (IEP): www.wrightslaw.com/idea/law/model.iep.form.pdf

Procedural Safeguards Notice: www.wrightslaw.com/idea/law/model.safeguard.form.pdf

Prior Written Notice: www.wrightslaw.com/idea/law/model.pwn.form.pdf

When references to other works are cited, you will find the citation in a footnote. Additional references and resources are included in Appendix A at the end of this book.

Updates

For updates on the Individuals with Disabilities Education Act, go to www.wrightslaw.com/idea/index.htm

To learn more about special education law and advocacy, subscribe to ***The Special Ed Advocate***, the free online newsletter that is published weekly by Wrightslaw.