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# Preface

Twenty-one years after the Supreme Court initiated the era of equal educational opportunity in striking down racial segregation in schools in *Brown v. Board of Education* (1954), Congress enacted sweeping legislation mandating that students with disabilities be provided with appropriate special education services tailored to their unique needs. Most recently reauthorized in 2004, this law, now known as the Individuals with Disabilities Education Act (IDEA), and its accompanying regulations, dramatically altered the continuum of programs that states, through local school boards, are required to provide for students with disabilities. Moreover, as an introductory note, it is worth pointing out that while some refer to the IDEA by the title it was assigned in the reauthorization process, the Individuals with Disabilities Education Improvement Act (IDEIA), we have not adopted this approach. Instead, we prefer to follow the very first section of the revised IDEA, according to which “This chapter may be cited as the ‘Individuals with Disabilities Education Act’” (20 U.S.C. § 1400(a)).

The IDEA and its regulations are designed to be comprehensive in addressing the needs of students with disabilities. Even so, the IDEA and its regulations have generated more litigation than any other educational law in American legal history. These suits arose due to two interrelated reasons. First, no statute can anticipate all legal issues that can arise. Second, the IDEA affords parents a variety of rights, not the least of which are to request that fair and impartial third-party decision-makers resolve disagreements at due process hearings over whether school officials have provided their children with a free appropriate public education (FAPE) (20 U.S.C. § 1415(f)(1)(a)) and to bring civil actions in federal or state courts challenging the results of hearings once they have exhausted administrative remedies (20 U.S.C. § 1415(i)(2)(A)). Insofar as we live in a litigious society wherein parents are well aware of their rights and those of their children, and are willing to seek judicial recourse, it should not be surprising that these conflicts would lead to litigation, a small portion of which is excerpted in this case book.

As witnessed with *Brown v. Board of Education* and many other cases, one judicial opinion has the ability to change the very nature of American public schools. As such, each chapter in this book includes carefully selected, and edited, excerpts from leading cases that helped to shape the face of the law of special education. We include these cases because they help to illustrate the

points that the text makes in the narrative. Further, by reviewing the actual words of the justices of the Supreme Court and judges in lower courts, readers can develop a deeper understanding of how well-thought-out their opinions are, even in cases with which they may disagree.

Aware of the complexity of the IDEA, its regulations, and the many cases that they have generated, this book is designed to provide educators, whether in preservice programs preparing to become teachers, administrators, counselors, or a variety of other positions in schools, or professionals already serving in these capacities, with wide-ranging information on the law of special education. This book combines a narrative approach with selected cases that illuminate how federal and state courts have interpreted the IDEA and its regulations, addressing the delivery of special education and related services to students with disabilities. As such, one of our goals is to offer a book that is comprehensive in its coverage of the law of special education. In this respect, we believe that this casebook can serve as a text in courses on legal issues in special education and as a supplementary text in general education law courses.

At the same time, this book is not intended to serve as a “how-to manual.” Rather, this text is designed to help to make educators aware of the many requirements governing the law of special education, in the hope that this increased understanding will put them in a better position to implement the IDEA as they deal with parents and students. In light of the detail that the book provides, we believe that it can also serve as a current and concise desk reference for practicing educators ranging from building- or district-level administrators to classroom teachers of all kinds and resource specialists in special education and related fields such as counseling.

When referring to parents, for the sake of brevity, and consistency, even though the IDEA acknowledges that parental rights apply to parents, including natural, adoptive, or foster parents, guardians, and individuals acting in the place of natural or adoptive parents (including grandparents, stepparents, or other relatives) with whom children live, or individuals who are legally responsible for their welfare (20 U.S.C. §§ 1402 (23)), this book uses the term *parents* throughout to refer to all of these groups of adults unless otherwise noted by the circumstances.

This casebook is organized around the major issues in the law of special education. The book thus examines the substantive and procedural requirements that the IDEA, its regulations, and litigation place on educators. Among the major topics that this book addresses are the rights of students with disabilities to a free appropriate public education (FAPE), procedural due process, proper placement, the delivery of related services, discipline, and remedies if school officials fail to adhere to the IDEA. The book also traces the legal history of special education while briefly discussing other statutes that affect the delivery of special education services.

Insofar as there are many issues to cover in a book on special education law, it is a double challenge selecting both the issues to be grouped in each chapter and the order of the chapters themselves. To address this challenge, we have

organized the chapters in this book around the major procedural and substantive issues in the law of special education.

Chapter 1 offers a brief historical perspective of the legal development of special education in the United States. It begins with an overview of the sources of law in order to place the rest of the book in its proper legal context before discussing the forces that led to the development of special education legislation in the United States. The remainder of the chapter reviews the federal statutes currently impacting the delivery of special education services for children with disabilities. Of particular interest should be a brief section that highlights some of the major changes to the IDEA.

The second chapter presents information pertaining to the rights of students to receive special education and related services. The chapter considers who is eligible to receive services, along with the legal requirements for providing a free appropriate public education in the least restrictive environment (LRE).

Among the IDEA's many unique features is its elaborate system of due process safeguards that are designed to ensure that students with disabilities receive a FAPE. Chapter 3 thus highlights the identification and assessment of students, the development of their individualized education programs (IEPs), parental rights, and changes in placements under the IDEA.

Chapter 4 discusses the components of FAPE and the factors that IEP teams must examine when making decisions that place children in the LRE. This chapter also includes material about when school boards are required to place children in private day schools or residential programs and when students are entitled to extended school-year programs

The IDEA requires states, through local school boards, to provide students with disabilities related, or supportive, services to the extent that they are necessary for them to benefit from their special education programs. Accordingly, Chapter 5 provides detailed information concerning the supportive services that qualify as related services and the circumstances under which they must be provided. In addition, the chapter examines issues surrounding assistive technology and transition services.

Chapter 6 reviews what may be the most complex, and contentious, of all issues dealing with students with disabilities: discipline. To this end, this chapter discusses the special procedures that school officials must adhere to when disciplining special education students, including those who may be suspended or expelled but have yet to be formally identified as having disabilities under the IDEA.

When Congress enacted the IDEA, it envisioned a system whereby school officials and parents would work together to plan appropriate placements for qualified students with disabilities. Yet, since Congress recognized that disputes would arise, it included procedures in the IDEA to help parents and school boards to resolve their differences. In order to keep educators up to date on these important issues, Chapter 7 examines the IDEA's dispute resolution provisions, focusing on resolution sessions, mediation, due process hearings, and judicial proceedings.

Chapter 8 focuses on the remedies available to parents when school boards fail to meet their duties to provide children with a FAPE. This chapter primarily addresses awards of tuition reimbursement, compensatory educational services, attorney and other fees, as well as a general discussion on punitive damages.

Insofar as a variety of emerging and recurring issues do not lend themselves to being included in other parts of this book, Chapter 9 reflects on selected topics that are not addressed elsewhere. More specifically, this chapter reviews state testing programs, state responsibility to ensure compliance with the IDEA, the responsibilities of insurance carriers, policy letters, supervision of students with disabilities, and Part C of the IDEA.

Chapter 10 deals with antidiscrimination laws and special education. After briefly comparing and contrasting the IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA), the remainder of the chapter primarily focuses on what school systems must do to comply with Section 504 and the ADA. The chapter examines the key issues of what it means to be otherwise qualified, reasonable accommodations, and the provision of comparable facilities.

The book includes a brief glossary of terms that are in bold but not defined or explained within the text. Instead, it is designed to define legal and technical terms with which readers may be unfamiliar. The book also offers a list of Internet resources, including Web sites of state departments of education, special education services, and education law.