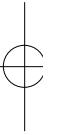
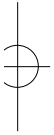


**Special
Education
Law**

Second Edition





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Education
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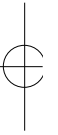
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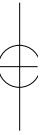
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For our children, Alison and Adam, who
continue to teach us to be tolerant and
understanding, and who willingly share us and
themselves with children less fortunate.





Contents

Table of Cases	xv
Preface	xxv
Note on Abbreviations	xxvii
Chapter 1. An Overview	1
1.1 Introduction	1
1.2 Brief History	2
1.3 IDEA: An Overview	6
1.4 Section 504: An Overview	8
1.4.1 The Validity of Section 504 Regulations and Undue Burden	8
1.4.2 Section 504 Undue Burden — Case Examples	12
1.5 Section 1983 and IDEA	14
1.6 Education Department General Administrative Regulations	16
1.7 Family Educational Rights and Privacy Act	17
Chapter 2. Parties to the Process	19
2.1 Parents and Child as Parties	19
2.2 Effect of Termination of Parental Custody	21
2.3 Surrogate Parents in General	22
2.3.1 The State and Its Employees as Surrogate Parents	23
2.4 Foster Parents in General	23
2.4.1 Foster Parents as Surrogate Parents	24
2.5 The LEA as a Party	25
2.5.1 Determining the Appropriate LEA Against Whom to Proceed (Residency)	25
2.6 The State as a Party Defendant	27
2.7 The State as a Plaintiff	27
2.8 Third-Party Interests	28
Chapter 3. Provision of a Free Appropriate Education	29
3.1 Introduction	29
3.2 Provision of a FAPE as a Procedural Right in General	30
3.3 Provision of a FAPE as a Substantive Right in General	31
3.3.1 Level of Education Required to Constitute FAPE Under IDEA	31
3.3.2 Higher State Standard for Level of Services	33
3.3.3 Level of Education Required to Constitute FAPE Under § 504	34
3.4 Education to Be at No Cost to Parents	34
3.5 Cost as Factor in Providing FAPE	35
3.6 Age Coverage	37
3.7 The Effect of Graduation Under IDEA	38
3.8 The Effect of Graduation Under § 504	38
3.9 Related Services in General	39
3.9.1 Equipment Versus Services	40

3.9.2 Transportation as a Related Service	42
3.9.3 Speech Pathology and Audiology As Related Services	43
3.9.4 Psychological Services and Counseling as Related Services	43
3.9.5 Physical Therapy, Occupational Therapy, Orientation and Mobility, Recreation, Early Identification and Assessment of Disabilities as Related Services	44
3.9.6 Medical Services as Related Services	45
3.9.7 School Health Services as Related Services	46
3.9.8 Social Work Services, Parent Counseling and Training As Related Services	48
3.9.9 Related Services Without Special Education	48
3.10 Physical Education	49
3.11 Travel Training	49
3.12 Vocational Education	49
3.13 Extracurricular Activities	50
 Chapter 4. Identification and Evaluation	 51
4.1 In General	51
4.2 Identification	51
4.3 Preplacement Evaluations	53
4.4 Reevaluations Under IDEA	55
4.5 Reevaluations Under § 504	55
4.6 Evaluation Standards Under IDEA	57
4.7 Evaluation Standards Under § 504	59
4.8 Notice and Consent for Evaluation Under IDEA	59
4.9 Notice and Consent for Evaluation Under § 504	60
4.10 Evaluators Under IDEA	61
4.11 Evaluators Under § 504	62
4.12 Reporting Evaluation Results Under Both IDEA And § 504	62
4.13 Parental Participation	62
4.14 Disputes Over Evaluation	63
4.15 Identification/Evaluation Checklist-Summary	63
 Chapter 5. Eligibility	 67
5.1 In General	67
5.2 Specially Designed Instruction	68
5.2.1 Nonacademic Instruction	68
5.2.2 Medical v. Educational Needs	69
5.2.3 Ability to Benefit From Educational Services	70
5.3 Qualifying Conditions in General	71
5.3.1 Hearing Impairments	72
5.3.2 Visual Impairment	74
5.3.3 Orthopedic Impairments in General	76
5.3.3.1 Congenital Orthopedic Disorders	77
5.3.3.2 Orthopedic Impairments Caused by Disease	78
5.3.3.3 Other Orthopedic Impairments	78
5.3.4 Mental and Emotional Impairments in General	79
5.3.4.1 Mental Retardation	80
5.3.4.2 Specific Learning Disabilities in General	81
5.3.4.3 Perceptual Disabilities	82
5.3.4.4 Brain Injury and Minimal Brain Dysfunction	83
5.3.4.5 Dyslexia	83
5.3.4.6 Developmental Aphasia	84
5.3.4.7 Emotional Disturbances	84

5.3.4.8 Autism	86
5.3.4.9 Traumatic Brain Injury	86
5.3.5 Catch-all Categories in General	87
5.3.5.1 Multihandicapped	87
5.3.5.2 Other Health Impaired	87
5.3.5.3 Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD)	89
5.3.6 Disabilities Not Mentioned Under IDEA — the Role of § 504	91
5.3.6.1 Acquired Immune Deficiency Syndrome (AIDS)	92
Chapter 6. Independent Educational Evaluations	95
6.1 In General	95
6.2 Notice of Availability of IEE	96
6.3 Parental Request for an IEE	96
6.4 Standards for IEE	96
6.5 Cost of IEE	97
6.6 Unilateral Action by Parent to Obtain IEE	97
6.7 IEE At Public Expense Is Limited to One	98
6.8 Use of IEE	98
6.9 IEE At Parental Expense	98
6.10 Hearing Officer Ordered IEE	99
Chapter 7. Individualized Education Program	101
7.1 In General	101
7.2 Agency Responsible for IEP Development	103
7.3 Time Frame for Development of IEP	103
7.4 Placement Decisions and the IEP	104
7.5 IEP Meetings	105
7.6 Parental Participation	106
7.7 Drafting the Document	107
7.7.1 Drafting Example	108
7.8 Private Placements	110
7.9 Children with Disabilities in Public Charter Schools	111
7.10 Handling Disputes Over the IEP	112
7.11 IEP Checklist	112
Chapter 8. Placement	115
8.1 Placement Criteria	115
8.2 Location/Least Restrictive Environment/Mainstreaming	116
8.3 Annual Review of Placement Required	119
8.4 Change in Placement	120
8.5 Placement Decision-Makers	120
8.6 Extended School Day and Year	121
8.7 Continuum of Placements Required	122
8.8 Residential School Placements	122
8.9 Private Placement by LEA in General	123
8.9.1 Requirements for Private Facilities Where LEA Places Child	124
8.10 Unilateral Private Placement by Parents Where LEA Offers FAPE	125
8.10.1 Non-IDEA Services Required for Unilateral Private School Placements	128
8.11 Parental Placement in Parochial School/Separation of Church and State	129
Chapter 9. Notice and Consent	133
9.1 In General	133

9.2 Notice Concerning Identification, Evaluation, and Placement in General	134
9.2.1 Notice of Preplacement Evaluation	135
9.2.2 Notice of Initial Placement	135
9.2.3 Notice of Change in Placement	136
9.3 Notice After Hearing Request	137
9.4 Notice to Parents Concerning Agency's Annual Program	137
9.5 When Parental Consent Required	137
9.5.1 Content of Consent	138
9.5.2 Refusal to Provide Consent	139
9.6 Notice Checklist	139
9.7 Consent Checklist	140
Chapter 10. Discipline	141
10.1 In General	141
10.2 Changes in Placement	144
10.3 Provision of a FAPE for Suspended or Expelled Student	144
10.4 Functional Assessment	145
10.5 Interim Alternative Placement — Weapons and Drugs	145
10.6 Manifestation Determination Review	146
10.7 Parental Appeal — Expedited Due Process Hearing	148
10.8 Hearing Officer Authority	148
10.9 Placements During Appeals	149
10.10 Protections for Children Not Yet Eligible for Special Education and Related Services	149
10.11 Referral to and Action by Law Enforcement and Juvenile Courts	150
10.12 Chemical Dependency and Suspension	150
10.13 Constitutional Considerations	151
10.14 Steps to Take in Disciplinary Actions	151
Chapter 11. Impartial Due Process Hearing	153
11.1 In General	153
11.2 Statute of Limitations	153
11.3 Scope of Review	154
11.4 Requesting the Due Process Hearing	157
11.5 The Hearing Officer in General	158
11.5.1 Hearing Officer Impartiality	158
11.5.2 Scope of Hearing Officer's Authority	160
11.6 Procedural Rights Related to the Hearing	162
11.7 Status of Child During Due Process — "Stay-Put" Provision	164
11.8 Discovery	165
11.9 Burden of Proof Under the Act	167
11.10 Rules of Evidence	167
11.11 Conducting The Hearing	167
11.12 Hearing Officer's Decision	168
11.13 Due Process Hearing Checklist	168
Chapter 12. Administrative Appeals	171
12.1 In General	171
12.2 Statute of Limitations and Notice of Appeal	171
12.3 Timelines	172
12.4 Subject Matter/Scope of Review	172
12.5 Who May Appeal — Parties Aggrieved	173
12.6 Impartiality	174

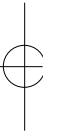
12.7 Additional Evidence Allowed	175
12.8 Finality of Decision	176
12.9 Child's Status During Proceedings	176
12.10 Administrative Review Checklist	177
Chapter 13. Judicial Review	179
13.1 In General	179
13.2 Statute of Limitations	179
13.3 Exhaustion of Administrative Remedies	181
13.4 Removal From State to Federal Court	183
13.5 Issues Considered	184
13.6 Discovery	185
13.7 Standard of Review in General	186
13.7.1 Traditional Administrative Review	187
13.7.2 De Novo Review and Due Weight	188
13.7.3 Issues Subject to Due Weight	191
13.8 Burden of Proof in General	193
13.8.1 Burden of Persuasion on Substantive Issues	194
13.8.2 Burden of Proof on Procedural Issues	196
13.9 Jury Trials	197
13.10 Evidence	198
13.11 Appellate Review of Judicial Determinations	199
Chapter 14. Remedies	203
14.1 In General	203
14.2 State Immunity Abrogated	203
14.2.1 Avoiding Eleventh Amendment Immunity	206
14.3 Damages in General	207
14.4 Tuition Reimbursement for Unilateral Placements Where LEA Fails to Provide FAPE	207
14.5 Compensatory Education	208
14.5.1 Compensatory Education Beyond Age 21	210
14.6 Monetary Damages	211
14.7 Procedural Violation Remedy	214
Chapter 15. Attorneys' Fees and Costs	223
15.1 Attorneys' Fees in General	223
15.2 Availability of Attorneys' Fees for Work in Administrative Proceedings	224
15.2.1 What Constitutes the Administrative Proceedings?	226
15.2.2 Authority of Administrative Officer to Award	227
15.3 Ability to File Suit Solely for Attorneys' Fees	228
15.4 Lay Advocates/Paralegals/ Parent Advocates	230
15.5 Costs As Well As Attorneys' Fees	231
15.5.1 Expert Fees and Expenses	231
15.5.2 Transcripts	233
15.5.3 Discovery and Miscellaneous Expenses	233
15.6 Is There a Dispute and are the Parents Prevailing Parties?	234
15.6.1 Prevailing on Part of the Claim	235
15.6.2 Procedural and Substantive Violations	236
15.7 Setting the Fee	237
15.7.1 No Bonus or Multiplier	239
15.8 Fees or Costs Subsequent to Time of Written Offer to Settle	240
15.8.1 Justified Rejection of the Offer	241

15.9 Procedural Violations or Undue Protraction By LEA	242
15.10 Complaints Resolved By Settlement	244
15.11 Waiver of Attorneys' Fees	245
Chapter 16. Records	247
16.1 In General	247
16.2 Safeguards	249
Chapter 17. Monitoring and Compliance	251
17.1 State Monitoring and Compliance	251
17.1.1 State Complaint Checklist	252
17.2 Office of Special Education Programs	253
17.3 Office for Civil Rights	254
17.3.1 OCR Complaint Checklist	257
17.4 Coordination of OCR and OSEP	258
17.5 Mediation	259
17.6 Choosing Dispute Resolution Process	260
Chapter 18. Infants and Toddlers	263
18.1 Introduction to Infants and Toddlers With Disabilities Act	263
18.2 ITDA Relationship to Other Laws	264
18.3 Funds	264
18.4 Eligibility	265
18.5 Identification and Assessment	265
18.6 Individualized Family Service Plan	266
18.7 Early Intervention Services	268
18.7.1 Audiology Services	268
18.7.2 Case Management Services	269
18.7.3 Family Training, Counseling, Home Visits	269
18.7.4 Health Services	270
18.7.5 Medical Services for Diagnosis or Evaluation	270
18.7.6 Nursing Services	270
18.7.7 Nutrition Services	271
18.7.8 Occupational Therapy	271
18.7.9 Physical Therapy	271
18.7.10 Psychological Services	271
18.7.11 Social Work Services	272
18.7.12 Special Instruction	272
18.7.13 Speech-Language Pathology	272
18.7.14 Transportation	272
18.7.15 Personnel	272
18.8 Procedural Safeguards	273
18.9 Comparison of IDEA and ITDA	274
Appendix 1 Note to Nonlawyers	277
Appendix 2 State Educational Agency Directory	280
Appendix 3 United States Department of Education Addresses	287
Appendix 4 Forms	289
Prior Notice	289
Consent	291
Notice of Procedural Safeguards	292

CONTENTS

xiii

Eligibility Committee Summary of Deliberations	296
Addendum to Eligibility Committee Summary of Deliberations for Learning Disabled Student	301
Parent(s), Guardian(s) or Surrogate Letter of Initial Eligibility and IEP	304
Parent(s), Guardian(s) or Surrogate Letter of Ineligibility	305
Special Education Individualized Education Program	306
Request for Due Process Hearing	315
Request for Administrative Appeal	316
Complaint	317
Motion for Allowance of Attorney's Fees and Costs	319
Settlement Agreement	325
Index	327



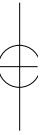


Table of Cases

- A.A. v. Cooperman, 48
A.W. v. Northwest R-1 School Dist., 116-118, 155
Abney v. District of Columbia, 22, 29, 182
Abrahamson v. Hershman, 36, 69-70, 123, 154-155, 191, 193, 197, 200
Adams Central School Dist. No. 090 v. Deist, 200, 209
Adams v. Oregon, 172, 267
Adams v. Bell, 255-256
Adashunas v. Negley, 4
Adler v. Education Dept., 180, 229
Agostini v. Felton, 130-131
Aguilar v. Felton, 130
Akers v. Bolton, 91, 95
Alamo Heights Indep. School Dist. v. State Bd. of Educ., 42, 121
Alexander K. v. Virginia Bd. of Educ., 155
Alexander v. Choate, 10, 12
Alexopoulos v. Riles, 199, 209-210
Alexopoulos v. San Francisco Unified School Dist., 180, 204, 209
Alison H. v. Byard, 245
Allstate Ins. Co. v. Bethlehem Area School Dist., 28
Allstate Construction Co. v. Durkin, 11
Amann v. Town of Stow, 106, 189
Amelia County School Bd. v. Virginia Bd. of Educ., 183-184
American Council of the Blind of Colorado v. Romer, 235
Amos v. Maryland Dept. of Pub. Safety & Correctional Servs., 205
Andalusia City Bd. of Educ. v. Andress, 180
Andersen v. District of Columbia, 165, 220
Anderson v. Thompson, 4
Andre H. v. Ambach, 182
Andrew S. v. School Committee of Town of Greenfield, 183, 236
Andrews v. Ledbetter, 28
Angela L. v. Pasadena Indep. School Dist., 224, 228, 236, 245
Antkowiak v. Ambach, 123-124, 174
Arnow v. District of Columbia, 232
Armstrong v. Alicante School, 141
Armstrong v. Kline, 182
Arons v. New Jersey State Bd. of Educ., 230
Association For Retarded Citizens In Colorado v. Frazier, 13
Association for Community Living v. Romer, 183
Association for Retarded Citizens of Alabama, Inc. v. Teague, 6
Austintown Local School Dist. Bd. of Educ. v. Mahoning County Bd. of Mental Retardation and Developmental Disabilities, 245
Bailey v. District of Columbia, 232
Baker v. Babcock & Wilcox Co., 167
Bales v. Clarke, 42
Barnett v. Fairfax County School Bd., 212
Barwacz v. Michigan Dept. of Educ., 6, 33-34, 185, 190, 195, 199
Baser v. Corpus Christi Independent School Dist., 69
Battle v. Pennsylvania, 68, 121, 155, 182
Beard v. Teska, 238, 243
Behavior Research Institute v. Ambach, 239
Belanger v. Nashua, New Hampshire School Dist., 247
Berkowitz v. New York City Bd. of Educ., 229
Bernard v. School Bd. of City of Norfolk, 157
Bernardsville Bd. of Educ. v. J.H., 115, 189
Bertolucci v. San Carlos Elementary School Dist., 32
Beth v. Carroll, 14, 106
Bill Rivers Trailers, Inc. v. Miller, 230
Birmingham v. Omaha School Dist., 176, 229
Birmingham and Lamphere School Dist. v. Superintendent, 173
Blackmon v. Springfield R-XII School Dist., 155
Blanchard v. Bergeron, 238-239
Block v. District of Columbia, 220
Blum v. Stenson, 238-239
Board of Educ. v. Halacka, 180
Board of Educ. of Montgomery Co. v. Brett Y., 156, 183

- Board of Educ. of the Town of Bozrah v. State Bd. of Educ., 27
- Board of Educ. of Community Unit School Dist. No. 428 v. Board of Educ. of High School Dist. No. 214, 26
- Board of Educ. of LaGrange v. Illinois Bd. of Educ., 117
- Board of Educ. of the East Windsor Regional School Dist. v. Diamond, 224
- Board of Educ. of the County of Cabell v. Di-enelt, 171
- Board of Educ. of Community H.S. Dist. No. 218 v. Illinois State Bd. of Educ., 164
- Board of Educ. of Oak Park and River Forest H.S. Dist. No. 200 v. Kelly E., 204
- Board of Educ. of Community High School Dist. 118 v. Ill. State Bd. of Educ., 136
- Board of Educ. of Township H.S. Dist. No. 211 v. Kirtz-Imig, 142
- Board of Educ. v. Department of Educ., 44
- Board of Educ. of Oak Park v. Nathan, 235
- Bonadonna v. Cooperman, 57, 118
- Boone County R-IV School Dist. v. Missouri State Bd. of Educ., 184
- Borengasser v. Arkansas State Bd. of Educ., 224, 241
- Bow School Dist. v. Quentin W., 180
- Bradley v. Arkansas Dept. of Educ., 204, 206
- Brandon E. v. Wisconsin Department of Public Instruction, 174
- Brandon H. v. Kennewick School Dist., 198
- Brantley v. Independent School Dist. No 625, 6, 183
- Brentwood Union Free School Dist. v. Ambach, 26
- Brian S. v. Vance, 195
- Briere v. Fair Haven Grade School Dist., 124
- Briggs v. Connecticut State Bd. of Educ., 118, 190
- Brimmer v. Traverse City Area Public Schools, 158
- Brookhart v. Illinois State Bd. of Educ., 57
- Brookline School Comm. v. Golden, 136
- Brown v. Board of Education, 2, 155
- Brown v. Johnson, 16
- Brown v. City of Oneonta, New York Police Dept., 247, 249
- Brown v. District of Columbia Bd. of Educ., 155
- Brown v. Jupiter Hospital, 230
- Bruschini v. Board of Educ. Arlington Central School Dist., 179
- Buffolino v. Sachem Central School District, 182
- Burger v. Murray County School District, 195
- Burilovich v. Board of Educ. of Lincoln Consolidated Schools, 103
- Burke County Bd. of Educ. v. Denton, 6, 8-9, 32, 185, 190-191
- Burpee v. Manchester School Dist., 5, 224
- Burr v. Sobol, 175, 207, 209-210
- Burr v. Ambach, 161, 175, 207, 209-210, 224
- Butler v. Evans, 70
- Cain v. Yukon Pub. Schools Dist. I-27, 200
- Caitlin v. Sobol, 27
- Camenisch v. University of Texas, 4, 13
- Campbell v. Talladega County Bd. of Educ., 69, 209-210
- Capillano v. Hyde Park, 211
- Capistrano Unified School Dist. v. Wartenberg, 189
- Cappello v. District of Columbia Bd. of Educ., 224
- Carey v. Piphus, 203
- Carl D. v. St. Louis County Special School Dist., 185
- Carlisle Area School v. Scott P., 196, 210
- Caroline T. v. Hudson School Dist., 163
- Carroll v. Capalbo, 60
- Carter v. Florence County School Dist. Four, 208
- Carter-Herman v. City of Philadelphia, 166
- Cavallaro v. Ambach, 50
- Cavanagh v. Grasmick, 30, 136
- Cedar Rapids Community School Dist. v. Garrett F., 34
- Charlie F. v. Skokie Bd. of Educ., 212
- Chris D. v. Montgomery County Board of Education, 48
- Christen G. v. Lower Merion School Dist., 30
- Christopher W. v. Portsmouth School Comm., 182
- Christopher N. v. McDaniel, 176, 211
- Giresoli v. M.S.A.D. No. 22, 36, 112
- City of Boerne v. Flores, 204
- City of Chicago v. International College of Surgeons, 184
- City of Riverside v. Rivera, 238
- Cleveland Heights-University Heights City School District V. Boss, 180
- Clevenger v. Oak Ridge School Bd., 13, 35
- Clovis Unified School Dist. v. California Office of Admin. Hearings, 45, 123
- Cochran v. District of Columbia, 115, 183
- Coe v. Michigan Dept. of Educ., 179

- Cohen v. School Bd., 42, 195
 Colin K. v. Schmidt, 4, 70, 123, 154, 158, 160, 174, 190, 200
 College Savings Bank v. Florida Postsecondary Educ. Expense Bd., 204-205
 Collinsgru v. Palmyra Bd. of Educ., 20-21
 Colven N. v. Lowndes, County School District, 149
 Combs v. School Bd. of Rockingham County, 5
 Community High School Dist. 155 v. Denz, 119, 173
 Concerned Parents & Citizens for the Continuing Educ. at Malcolm X v. New York City Bd. of Educ., 136
 Consolidated Rail Corp. v. Darrone, 213
 Converse County School Dist. No. Two v. Pratt, 24
 Coolbaugh v. Louisiana, 205
 Cordrey v. Euckert, 121, 197
 Cory H. v. Board of Educ. of City of Chicago, 115
 Counsel v. Dow, 224, 235
 County of San Diego v. California Special Educ. Hearing Office, 46, 70, 123
 Covington v. Knox, 4
 Cox v. Jenkins, 181-182
 Craig v. Gregg County, 235
 Crawford Fitting Co. v. J.T. Gibbons, Inc., 232
 Crawford v. Pittman, 36
 Cremeans v. Fairland Local School Dist. Bd. of Educ., 199
 Criswell v. State Dept. of Educ., 24
 Cunnigham v. Beavers, 16
 Curtis K. v. Sioux City Community School, 5
 Cypress-Fairbanks Indep. School Dist. v. Michael F., 224
 D.B. v. Ocean Township Bd. of Educ., 175, 190
 Daniel B. v. Wisconsin Dept. of Pub. Instruction, 162, 185
 Daniel O. v. Missouri State Board of Educ., 40
 Daniel R.R. v. Texas Board of Educ., 118-119
 Darlene L. v. Illinois State Bd. of Educ., 12-13, 43, 46
 Daugherty v. Hamilton County School, 38
 David H. v. Spring Branch Independent School Dist., 209
 David D. v. Dartmouth School Committee, 33-34, 185
 Davis v. District of Columbia Bd. of Educ., 160, 195
 De Rosa v. City of New York, 154
 DeFalco v. Deer Lake School Dist., 6
 Delaware County Intermediate Unit #25 v. Martin, 35
 DeLeon v. Susquehanna Comm. School Dist., 164
 Dell v. Board of Educ. Township High School 115, 106, 240
 Dellmuth v. Muth, 174-175, 203, 237
 Department of Educ. v. Carl D., 180, 229
 Department of Educ. v. Katherine D., 4, 36, 47
 Detsel v. Board of Education, 47
 Devine v. Indian River County, 20
 DeVries v. Spillane, 19, 63, 106, 112, 182
 Diamond v. McKenzie, 70, 123, 154, 160, 182
 Dima v. Macchiarola, 136
 District 27 Community School Bd. of Educ. v. Board of Educ., 92, 119
 Dodds v. Simpson, 198
 Doe v. Alabama State Dept. of Educ., 22, 190
 Doe v. Alfred, 16, 181
 Doe v. Anrig, 192, 200
 Doe v. Arizona Department of Educ., 183
 Doe v. Arlington County School Bd., 181
 Doe v. Belleville Pub. School Dist. No. 118, 183
 Doe v. Board of Educ. of Nashville-Davidson County, 45
 Doe v. Board of Educ. of Tullahoma City Schools, 118
 Doe v. Board of Education of Baltimore County, 230
 Doe v. Board of Pub. Educ., 58
 Doe v. Brookline School Committee, 194
 Doe v. Defendant I, 101, 195, 221
 Doe v. Knox County Bd. of Educ., 247, 249
 Doe v. Koger, 143
 Doe v. Maher, 112, 117, 143, 156, 182, 205-206, 252
 Doe v. Region 13 Mental Health-Mental Retardation Comm., 197
 Doe v. Sanders, 26
 Doe v. Smith, 180, 191, 195
 Donald B. v. Board of School Commissioners,, 127-128
 Dong v. Board of Educ. of Rochester Comm. Schools, 194
 Doucet v. Chilton County Bd. of Educ., 228, 230
 Doyle v. Arlington County Pub. School Bd., 191
 Dreher v. Amphitheater, 182
 Drew P. v. Clarke County School Dist., 70
 Duane M. v. Orleans Parish School Bd., 224, 228-229

- Dubner v. Ambach, 122
 Dubois v. Connecticut State Bd. of Educ., 48, 162
 East Brunswick Bd. of Educ. v. New Jersey State Bd. of Educ., 159
 Edelman v. Jordan, 203
 Edward B. v. Paul, 163
 Edwards v. Cleveland Heights-University Heights Bd. Educ., 184
 Eggers v. Bullitt County School Dist., 224, 228-229
 Eirschele v. Craven County Bd. of Educ., 229, 233
 Elizabeth S. v. Gilhool, 41
 Emma v. Eastin, 204, 206, 209
 Erickson v. Albuquerque Public Schools, 196, 199, 210
 Espino v. Besteiro, 40
 Eva N. v. Brock, 205
 Evans v. Jeff D., 245-246
 Evans v. Board of Educ. of Rhinebeck Central School Dist., 48, 104, 115
 Evans v. District No. 17 of Douglas County, 217-218
 Everson v. Board of Education, 130
 Ex Parte Young, 206
 Executive Software North America, Inc. v. United States District Court for Central Dist. of California, 185
 Family and Children's Center, Inc. v. School City of Mishawaka, 28
 Farmer's Insurance Exchange v. South Lyon Community Schools, 28
 Farrar v. Hobby, 234-235
 Fay v. South Colonie Central School Dist., 185, 203, 212
 Fayetteville Perry Local School Dist. v. Reckers, 163
 Fee v. Herndon, 16
 Feller v. Board of Educ., 199
 Field v. Haddonfield Bd. of Educ., 44, 245
 First Gibraltar Bank v. Morales, 11
 Florence County School Dist. v. Carter, 208
 Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank, 204
 Flour Bluff Independent School Dist. v. Katherine M., 116
 Foley v. Special School Dist. of St. Louis, 125, 127
 Fontenot v. Louisiana Bd. of Elementary and Secondary Educ., 16
 Fort Zumwalt School Dist. v. Clynes, 155, 157
 Foster v. District of Columbia Bd. of Educ., 54
 Fowler v. Unified School Dist. No. 259, 127
 Frank S. v. School of Committee of Dennis-Yarmouth Regional School Dist., 185
 Franklin v. Gwinnett County Public Schools, 213
 Freeman v. Cavazos, 256
 Frey v. Department of Health and Human Services, 166
 Frith v. Galeton Area School Dist., 16, 181
 Fuhrmann v. East Hanover Bd. of Educ, 63, 103, 110, 196
 Fulginti v. Roxbury Township Public Schools, 47
 G.C. v. Coler, 6, 16, 183
 G.D. v. Westmoreland School Dist., 190
 G.M. v. New Britain Bd. of Educ., 238-239
 Gadsby v. Grasmink, 205
 Gadsden City Bd. of Educ. v. B.P., 182
 Gallagher v. Pontiac School Dist., 32, 39
 Garland Independent School Dist. v. Wilks, 33
 Garro v. Connecticut, 204, 210
 Gary B. v. Cronin, 43-44
 Gehman v. Prudential Property and Casualty Ins. Co., 28
 Geis v. Board of Educ., 33-34, 70, 117, 200
 George H. and Irene L. Walker Home for Children, Inc. v. Town of Franklin, 25-26
 Georgia Assn. of Retarded Citizens v. McDaniel, 121
 Gerasimou v. Ambach, 181
 Gilliam v. Omaha, 203
 Gladys J. v. Pearland Indep. School Dist., 70, 123
 Golden Gate Transit Corp. v. City of Los Angeles, 213
 Gonzales v. Puerto Rico Dept. of Educ., 217
 Gordon v. Board of Educ. Howard County, 252
 Gorski v. Lynchburg School Bd., 38, 60, 138
 Goss v. Lopez, 151
 Gradby v. Grasmick, 220
 Great American Fed. Savings and Loan Assn v. Novotny, 197
 Greater Boston Television Corp. v. FCC, 187
 Green v. Johnson, 29
 Greer v. Rome City School Dist., 118
 Gregory K. v. Longview School Dist., 190, 201
 Greider v. Shawnee Mission Unified School Dist. #512, 108
 Grkman v. Scanlon, 55
 Grove City College v. Bell, 39
 Grubbs v. General Elec. Corp., 184
 Grube v. Bethlehem Area School Dist., 50

- Grymes v. Madden, 174-175, 195
 Guardians Assn v. Civil Service Commn, 197
 Guy J. v. New Hampshire Dept. of Educ., 181
 Hall v. Freeman, 26, 137
 Hall v. Vance County Bd. of Educ., 32, 34, 123, 237
 Hall v. Shawnee Mission School Dist, 70, 123
 Hamilton v. School Bd. of Commissioners of Mobile County, 185
 Hartman v. Loudon County, 119
 Hayes v. Unified School Dist. No. 377, 141-142
 Heather S. v. Niles Township High School Dist. No. 219, 155
 Heather S. v. Wisconsin, 219
 Heiderman v. Rother, 211
 Heldman v. Sobol, 159
 Helms v. Picard., 131
 Helms v. McDaniel, 174-176
 Helms v. Independent School Dist. No. 3 of Broken Arrow, 37-38
 Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 106, 191
 Hendricks v. Gilhool, 183, 205
 Hendry County School Bd. v. Kujawski, 160
 Henry v. School Administrative Unit No. 29, 195
 Hensley v. Eckerhart, 231, 235, 238
 Hessler v. State Bd. of Educ., 32, 97, 121-122, 158, 163
 Hill v. School Bd. of Pinellas County, 164
 Hiller v. Board of Educ., 62, 98, 195
 Hoffman v. East Troy Comm. School Dist., 188
 Holland v. District of Columbia, 106
 Hollenbeck v. Board of Educ., 159
 Holmes v. Sobol, 44
 Holmes v. Mill Creek Township School Dist., 95
 Honig v. Doe, 7, 19, 30, 63, 106, 112, 117, 136, 139, 141, 143, 156, 164-165, 182, 193, 205-206, 216, 222, 252
 Hope v. Cortines, 181
 Hopkins v. Aldine Independent School Dist., 176
 Hornfield v. City of North Miami Beach, 213
 Horton v. Liberty Mutual Ins. Co, 184
 Houston Independent School Dist. v. Bobby R., 155
 Howard v. Friendswood Independent School Dist., 10
 Howell v. Waterford Pub. Schools, 6, 16, 181-182
 Hudson v. Bloomfield Hills, 116
 Hudson v. Wilson, 97-98, 106
 Hurry v. Jones, 42, 155
 Hyde Park Central School Dist. v. Peter C., 161
 Hyden v. Wilson County Bd. of Educ., 241
 Hymes v. Harnett County Bd. of Educ., 4, 47
 IBM Corp. v. Edelstein, 166
 In re , 2, 17, 21, 28, 38, 42-43, 52, 73, 83, 127, 185, 247-248, 263-264, 266-274, 276
 In re Arons, 230
 In re Children Residing at St. Aloysius Home, 26
 Independent School Dist. No. 277 v. Paultz, 172
 Independent School Dist. No. 283 v. S.D., 115, 117, 222
 Ingraham v. Wright, 16
 Irving Indep. School Dist. v. Tatro, 70, 155, 191
 J.A. v. Board of Educ. for Dist. of South Orange and Maplewood, 26
 J.B. v. Essex-Caledonia Supervisory Union, 229
 J.B. v. Killingly Bd. of Educ., 36, 70
 J.D. v. Pawlet School District, 91
 J.G. v. Board of Education of the Rochester City School District, 183, 244
 J.J. Garcia v. Board of Educ., 139
 Jackson v. Franklin County School Bd., 196, 200, 208, 210
 James v. Nashua School Dist., 229
 Janzen v. Knox County Bd. of Educ., 180, 229
 Jasa v. Millard Public School, 125
 Jason D.W. v. Houston Indep. School Dist., 238-239
 Jefferson County Bd. of Educ. v. Breen, 190, 209-210
 Jeffreys v. New Jersey Depart. of Educ., 69
 Jenkins v. Florida, 35
 Jeremy H. v. Mount Lebanon School Dist., 183
 Jim C. v. Arkansas Dept. of Educ., 204-206
 John H. v. MacDonald, 20
 Johnson v. Bismarck Public School Dist., 228
 Johnson v. Clarke, 211
 Johnson v. Georgia Highway Express, Inc., 238-239
 Johnson v. Independent School Dist. No. 4, 121
 Johnson v. Lancaster-Lebanon Intermediate Unit 13, 175
 Johnston v. Ann Arbor Pub. Schools, 116-117, 156
 Jose P. v. Ambach, 4, 54, 200
 Joshua B. v. New Trier Township High School Dist. 203, 164

- Joshua W. v. Board of Educ. of Wichita Public Schools, 26
 KDM v. Reedsport School District, 125
 K.P. v. Juzwic,, 252
 K.R. v. Anderson, 126
 Kari v. Franklin Special School Dist., 165
 Karl v. Board of Education, 188
 Kay v. Ehrler, 230
 Keay v. Bismarck R-V School Dist., 228
 Kennedy v. Board of Educ., 41, 155
 Kerkam v. District of Columbia Bd. of Educ., 220
 Kerkam v. McKenzie, 195, 220
 Kerr Center Parents Assn. v. Charles, 182
 Kevin G. v. Cranston, 116
 Kimmel v. Florida Bd. of Regents, 204
 Kirkpatrick v. Lenoir County Bd. of Educ., 189-190
 Kiser v. Garret, 20-21
 Kletzelman v. Capistrano Unified School Dist., 5, 234
 Kominos v. Upper Saddle River Bd. of Educ., 182
 Korea Exchange Bank v. Trackwise Sales Corp., 184
 Kotowicz v. Mississippi State Bd. of Educ., 159
 Kristi W. v. Graham Independent School Dist., 238
 Kruelle v. Biggs, 175
 Kruelle v. New Castle County School Dist., 13, 35, 46, 69, 123, 154, 175, 205
 L.C. v. Utah State Bd. of Educ., 156, 181, 212
 Lachman v. Illinois State Bd. of Educ., 117, 155
 Lamont X. v. Quisenberry, 143
 Lang v. Braintree School Comm., 195
 Larry P. v. Riles, 58-59, 201
 Lascari v. Ramapo Indian Hills Reg. H.S. Bd. of Educ., 33
 Lau v. Nichols, 10
 Laura I. v. Clausen, 241
 Lauren T. v. Crisp County Board of Education, 227
 Lawson v. Edwardsburg Pub. School, 180
 Learning Disabilities Association of Maryland Inc. v. Board of Educ. of Baltimore Co., 181
 Lemon v. District of Columbia, 182
 Lemon v. Kurtzman, 130
 Lenhoff v. Farmington Pub. Schools, 127
 Leonard v. McKenzie, 104, 184, 220
 Lester H. v. Gilhool, 210
 Light v. Parkway c-2 School Dist., 142
 Linda W. v. Indiana Dept. of Educ, 21, 208
 Liscio v. Woodland Hills School Dist., 117
 Little Rock School v. Pulaski Special School Dist., 235
 Livingston School Dist. Nos. 4 & 1 v. Keenan, 180
 Logue v. Shawnee Mission Public School Unified School Dist., No 512, 155
 Lora v. Board of Educ. of New York City, 10
 Lucht v. Mollalla School Dist., 227
 M.C. v. Central Regional School Dist., 32, 69, 117, 208, 210
 M.C. v. Voluntown Bd. of Educ., 43
 M.M. v. Red Clay Consolidated School Dist., 181
 M.V. v. Gordon, 227
 Maher v. Gagne, 245
 Mahoney v. Administrative School Dist. 1, 34
 Maine v. Thiboutot, 206
 Makentozos v. DeBuono, 33
 Manchester School Dist. v. Charles M.F., 121
 Manchester School Dist. v. Williamson, 165
 Manecke v. School Board of Pinellas County, 14
 Marek v. Chesney, 240, 242
 Mark A. v. Grant Wood Area Educ. Agency, 117
 Martin v. School Bd. of Prince George County, 209
 Martinez v. Bynum, 25-26
 Martinez v. School Bd., 93, 119
 Mary P. v. Illinois State Bd. of Educ., 57
 Mason v. Schenectady City School Dist., 182
 Massachusetts Dept. of Public Health v. School Committee of Tewksbury, 224
 Mather v. Hartford School Dist., 32
 Mathern v. Cambell County Children's Center, 228
 Mathews v. Davis, 71, 200
 Matlock v. McElrath, 158-159
 Mattie T. v. Holladay, 58
 Mavis v. Sobol, 32, 181
 Max M. v. Thompson, 43, 133, 209
 Max M. v. New Trier High School Dist., 229
 Max. M. v. Illinois State Bd. of Educ., 40
 Maynard v. Greater Hout School Dist., 247
 Mayson v. Teague, 159
 McKay v. Winthrop, 211
 McKenzie v. Smith, 55, 69-70, 110, 120, 123, 136, 195, 200
 McKenzie v. Jefferson, 46, 195
 McNair v. Oak Hills Local School Dist., 42, 127-128

- McNair v. Cardimone, 42
 McSombodies v. Burlingame Elementary School, 228-229
 McWhirt v. Williamson County Schools, 118
 Medford v. District of Columbia, 238
 Megan C. v. Independent School Dist. No 625, 227
 Memphis Community School Dist. v. Stachura, 211
 Menecke v. School Bd., 182
 Metropolitan Govt. of Nashville and Davidson County v. Tennessee Dept. of Educ., 70
 Metropolitan Bd. of Public Educ. v. Guest, 199
 Metropolitan Govt. v. Cook, 199
 Meury v. Eagle-Union Community School Corp, 247
 Michael M. v. Board of Educ. of New York City School Dist., 229
 Miener v. Missouri, 4, 209-210, 212
 Milliken v. Bradley, 206
 Mills v. Board of Educ., 36
 Mitchell v. Helms, 131-132
 Mitten v. Muscogee County School Dist., 228-229
 Mohawk Trail Regional School Dist. v. Shaun D., 191
 Monahan v. Nebraska, 27, 176, 182
 Monticello School District v. George L., 198
 Moore v. District of Columbia, 224, 229
 Moreno v. Consolidated Rail Corp, 214
 Morton Community Unit School Dist. v. J.M., 47
 Moubry v. Independent School Dist. 696, 179
 Moubry v. Krebs, 184
 Mr. and Mrs. B. v. Weston Bd. of Educ., 232
 Mr. X v. New York State Educ. Dept., 190
 Mrs. B. v. Milford Bd. of Educ., 33, 35, 70, 123, 154
 Mrs. C. v. Wheaton, 6, 16, 136, 209-210
 Mrs. W. v. Tirozzi, 14, 16, 183
 Muller v. Committee on Special Educ. of East Islip Union Free School Dist., 190, 207
 Murphy v. Timberlake, 229
 Murphysboro Community Unit School Dist. v. Illinois State Bd. of Educ., 207
 Murray v. Montrose County School Dist. RE-1J, 116
 Muth v. Smith, 230
 Muth v. Central Bucks School Dist., 174-175, 237
 N.B. v. Alachua County School Bd., 16, 181
 Nadeau v. Helgemoe, 239
 Natrona County School Dist. No. 1 v. McKnight, 210
 Naugatuck Bd. of Educ. v. Mrs. D., 70
 Nelson v. Southfield Pub. Schools, 163, 175
 New Mexico Association for Retarded Citizens v. New Mexico, 1, 3, 10, 183
 New York Gaslight Club, Inc. v. Carey, 225
 New York State Assn. for Retarded Children v. Carey, 166
 Nieuwenhuis v. Delaval-Darien School Dist., 126
 Norris v. Massachusetts Dept. of Educ., 97
 North v. District of Columbia Bd. of Educ., 46
 North Carolina Dept. of Transportation v. Crest Street Community Council, 225, 228
 North Allegheny School Dist. V. Gregory P., 21
 Northcross v. Board of Educ., 234
 Oberti v. Board of Educ. of the Borough of Clementon School Dist., 117
 Ojai Unified School Dist. v. Jackson, 198
 Olin v. Leininger, 184
 P.L. v. Norwalk Bd. of Educ., 228
 Padilla v. School Dist. No.1 Denver, 4, 211
 Papacoda v. Connecticut, 43, 70
 Parents of Child, Code No. 870901W v. Coker, 92-93
 Parks v. Pavkovic, 71
 Pasatiempo v. Aizawa, 62
 Paschall v. Kansas City Star Co., 234
 Patricia P. v. Board of Educ. of Oak Park, 63, 186
 Patsy v. Florida Bd. of Regents, 4
 Payne v. Board of Education, 234
 Peck v. Lansing School Dist., 130-131
 Peniman v. Cartwright, 230
 Pennhurst State School and Hospital v. Halderman, 206
 Pennsylvania Association of Retarded Citizens (PARC) v. Pennsylvania, 3, 121
 People v. Hannon, 166
 Peter v. Wedl, 126, 129, 131
 Peter v. Jax, 235
 Pettie v. District of Columbia, 252
 Phil v. Massachusetts Dept. of Educ., 14, 210
 Phillips v. Board of Educ. Hendrik Hudson School Dist., 153
 Phipps v. New Hanover County Bd. of Educ., 155
 Phoenixville Area School Dist. v. Marquis B., 142
 Pink v. Mt. Diablo Unified School Dist., 33
 Pinkerton v. Moye, 42, 116, 118

- Pires v. Commonwealth, 156
 Pitts v. Vaughn, 230
 Polk v. Central Susquehanna Intermediate Unit 16, 32-33, 44, 68
 Poolaw v. Bishop, 116
 Powell v. Defore, 58, 209
 Powers v. Indiana Dept. of Educ., 189, 229
 Prescott v. Palos Verdes Peninsula Unified School Dist., 224
 Quackenbush v. Johnson City School Dist., 4, 182, 188
 Rabinowitz v. New Jersey State Bd. of Educ., 27
 Raymond S. v. Ramirez, 34, 95, 98
 Reed v. Makena, 229
 Reid v. Lincolnshire-Prairie View School Dist. 103, 15
 Renner v. Board of Education of the Public School of Ann Arbor, 34
 Rettig v. Kent City School Dist., 32
 Reusch v. Fountain, 156
 Ridgewood Bd. of Educ. v. N.E., 32, 208, 210
 Robert D. v. Sobel, 180, 229
 Robert M. v. Benton, 159, 175
 Robertson v. Granite City Community Unit School Dist. No. 9, 92
 Robinson v. Pinderhughes, 6, 15, 183
 Rodiricus L. v. Waukegan School Dist., No 60, 165
 Roe v. Town of Westford, 186
 Rogers v. Bennett, 182
 Roland M. v. Concord School Commission, 190
 Rollison v. Biggs, 13, 224
 Roncker v. Walter, 35, 118, 188
 Rose v. Nebraska, 15
 Rose v. Yeaw, 181
 Rosemary B. v. Board of Educ. of Community H.S., 229
 Ross v. Bernhard, 198
 Ross v. Beaumont Hospital, 198
 Ross v. Framingham School Committee, 193
 Rowe v. Henry County School Board, 27
 Russman v. Board of Education of the Enlarged City School District of the City of Watervliet, 126, 129
 S-1 v. Turlington, 10, 62, 120, 143, 157, 197
 S-1 v. Spangler, 160
 S1 v. State Bd. of Educ., 235
 Sabatini v. Corning-Painted Post Area School Dist., 161, 209
 Sacramento City Unified School District v. Rachel H., 118
 Saleh v. District of Columbia, 183
 Salley v. St. Tammany Parish School Bd., 53, 104
 San Francisco Unified School Dist. v. California, 205
 Sanchez v. Monumental Life Ins. Co., 184
 Sanders v. Marquette Pub. Schools, 4, 39
 Sanger v. Montgomery County Bd. of Educ., 70, 123
 Santosky v. Kramer, 21
 Schimmel v. Spillane, 124, 180, 208, 229, 237
 Schlumberger Industries, Inc. v. National Surety Corp., 184
 School Bd. of Martin County v. A.S., 160
 School Bd. of Nassau County, Florida v. Arline, 12
 School Bd. of Prince William County v. Malone, 5, 143, 224, 229
 School Bd. v. Beasley, 200
 School Bd. v. Nicely, 180
 School Committee of the Town of Burlington v. Department of Education of Massachusetts, 43, 185, 189-190, 192, 198, 207, 209
 School Dist. No. 153 Cook County v. School Dist. No. 154, 25
 School Dist. of Philadelphia v. Stephen M., 142
 Schreiber v. Ridgewood Bd. of Educ, 70, 123
 Schuldt v. Mankato Indep. School Dist. No. 77, 116
 Schuler v. Board of Educ. of the Central Islip Union Free School Dist., 247
 Scokin v. Texas, 180, 229
 Scott M. v. Governor Wentworth Regional School Dist., 23
 Scruggs v. Campbell, 179
 Seals v. Loftis, 34, 40, 43, 45
 Seattle School Dist. No. 1 v. B.S., 95, 207
 Sellers v. School Bd. of Manassas, 183, 211-212
 Seminole Tribe of Florida v. Florida, 204
 Serna v. Portales Municipal Schools, 10
 Shanahan v. Board of Educ. of Jamesville-DeWitt School Dist., 180, 245
 Shevtsov v. Los Angeles Unified School Dist., 20
 Shook v. Gaston County Bd. of Educ., 34
 Shuttleworth v. Broward County, 197
 Sidney K. v. Ambach, 173
 Silano v. Tirozzi, 224
 Silvio v. Commonwealth, 195
 Smith v. Philadelphia School Dist., 211
 Smith v. Parham, 195
 Smith v. Special School Dist. No. 1, 154, 157

- Smith v. Robinson, 4, 6, 9, 12-14, 16, 30, 43, 200, 212-214, 216, 223, 244
- Smith v. United States Postal Service, 4
- Sobol v. Burr, 175, 207, 209-210
- South Carolina v. Baker, 12
- Southeastern Community College v. Davis, 9
- Spaulding v. Mingo Bd. of Educ., 184
- Spiegler v. District of Columbia, 180, 189
- Spielberg v. Henrico County Pub. Schools, 104, 106, 111, 115, 156, 195-196, 200
- St. Johnsbury Academy v. D.H., 32
- St. Louis Developmental Disabilities Treatment Center Parents Association v. Mallory, 12, 182, 199
- Stacey G. v. Pasadena Indep. School Dist., 36
- Stark v. Walter, 15, 176
- State v. Martindale, 166
- Stearns v. Board of Educ. for Warren Township High School Dist. No. 121, 150
- Stemple v. Board of Educ., 20, 106
- Steven M. v. Gilhool, 26
- Still v. De Buono, 273
- Straube v. Florida Union Free School Dist., 182
- Sullivan v. Vallejo City Unified School Dist., 183
- Susan v. Wilson School Dist, 14, 190
- Susan R.M. v. Northeastern Independent School District, 21
- Susan N. v. Wilson School Dist., 190
- Susquenita School Dist. v. Raelee S., 19
- T.G. v. Board of Educ., 43
- T.H. v. Board of Educ. of Palatine Community Consolidated School, 155
- T.R. v. Kingwood Township Bd. of Educ., 63, 103, 200
- Tanberg v. Weld County Sheriff, 213
- Tatro v. Texas, 13, 40, 43, 45-48, 70, 118-119, 142, 155, 180, 191, 194-195, 229, 234
- Taylor v. Board of Educ., 43, 117, 156, 224
- Tennessee Protection and Advocacy, Inc. v. Board of Educ. of Putnam Co., Tenn., 28
- Tennessee Dept. of Mental Health & Mental Retardation v. Paul B., 106
- Teresa Diane P. v. Alief Independent School Dist., 35
- Texas City Indep. School Dist. v. Jorstad, 142
- Thomas v. Atascadero Unified School Dist., 119
- Thomas F. v. Cincinnati Bd. of Educ., 133, 191
- Thompson v. Board of Educ. of Special School Dist. No. 1, 154, 157
- Thornock v. Boise Indep. School Dist., 117
- Tice v. Botetourt County School Bd., 45
- Tilton v. Jefferson County Bd. of Educ., 136
- Timms v. Metropolitan School Dist. of Wabash County, 209
- Timothy W. v. Rochester School Dist., 63
- Tokarcik v. Forest Hills School Dist., 47, 112, 164, 180, 229
- Tompkins v. Forest Grove School Dist. #115, 172
- Tonya K. v. Chicago Bd. of Educ., 224
- Tracey T. v. McDaniel, 180, 195
- Tschanneral v. District of Columbia Bd. of Educ., 25
- Tuck v. HCA Health Services of Tenn., 4
- Tucker v. Bay Shore Union Free School Dist., 124
- Turilio v. Tyson, 13
- Turton v. Crisp County School Dist., 228
- United States v. Bergh, 11
- United Mine Workers of America v. Gibbs, 185
- Upper Valley Association for Handicapped Citizens v. Mills, 3
- Upper Valley Assn. for Handicapped Citizens v. Blue Mountain School Dist., 227, 229
- Urban v. Jefferson County School Dist., 6, 9, 16, 31, 133, 222
- Valerie J. v. Derry Cooperative School Dist., 207
- Vander Malle v. Ambach, 20, 180
- Vaughns v. Board of Educ., 230
- Verginia McC v. Corrigan-Camden Indep. School Dist., 235, 239
- Verhoeven v. Brunswick School Committee, 184
- Victoria L. v. District School Bd. of Lee County, 162, 174
- Visco v. School Dist., 118
- Vogel v. School Bd. of Montrose, 175
- W. T. v. Andalusia City Schools, 21, 235
- W.B. v. Matula, 6, 14, 16, 120, 182, 213
- W.G. v. Target School Dist. No. 23 Bd. of Trustees, 104, 110
- W.L.G. v. Houston County Bd. of Educ., 234
- W.T. v. Andalusia City Schools, 21, 235
- Wagner v. Short, 30, 210
- Walczak v. Florida Union Free School Dist., 154
- Walker County School Dist. v. Bennett, 198
- Wall v. Mattiluck-Cutchogue School Dist., 190
- Walled Lake Consolidated School v. Jones, 162
- Walton Central School District v. Kirk, 142
- Warner v. Independent School Dist. No. 625, 228

- Warren G. v. Cumberland County School Dist., 208
- Waterman v. Marquette—Alger Intermediate School Dist., 211
- Wayne County Regional Educ. Service Agency v. Pappas, 181
- Webster Groves School Dist. v. Pulitzer Pub. Co., 142
- Weil v. Board of Elementary & Secondary Educ., 136, 164
- Weiss v. School Bd. of County of Hillsborough, 220
- Wenger v. Canastota School Dist. 28, 20
- West Virginia University Hospitals, Inc. v. Casey, 232
- Wexler v. Westfield Bd. of Educ., 38
- Wharton v. Calderon,, 166
- White v. California, 208, 210-211
- Wilder v. Virginia Hospital Association, 213
- Will v. Michigan State Police, 206
- Williams v. Overturf, 99
- Williams v. Boston School Committee, 224, 239
- Wilson v. Garcia, 179
- Wilson v. Marana Unified School Dist., 117
- Wilson v. McDonald, 252
- Wilson v. School Dist. No. 1, 252
- Wise v. Ohio Dept. of Educ., 25
- Witte v. Clark County School Dist., 182
- Witters v. Washington Dept. of Services for the Blind, 130
- Wong v. The Regents of the University of California, 13
- Woolcott v. State Bd. of Educ., 205, 211
- Work v. McKenzie, 42, 128
- Wright v. Group Health Hosp., 166
- Y.O. v. New Britain Bd. of Educ., 245
- Yankton Area Adjustment Training Center, Inc. v. Oleson, 184
- Yanton School Dist. v. Schramm, 5
- Yaris v. Special School District of St. Louis, 13, 233
- Z.A. v. San Bruno Park School Dist., 230
- Zemel v. Rusk, 11
- Zobrest v. Catalina Foothills School District, 130

Preface

In the United States, more than 6.1 million children between birth and 21 years of age are receiving services under the Individuals with Disabilities Education Act (IDEA). That means that 6.1 million Individualized Education Programs (IEPs) are developed each year. Most of these IEPs are developed, and the students receive the educational services, with little conflict. IDEA in effect provides a roadmap that both the parents and the school follow toward the same destination. A fair number of parents and local educators, however, do not reach agreement about the provision of special education and related services and formal disputes result.

Our hope is that this book assists in reading that map as well as in resolving those disputes. The book is designed to take the lawyers, educators, and other professionals without prior experience through the process leading to an agreement. If agreement, however, is not reached between the school and the public agency responsible for educating the child, the book is designed to help the participants through the process of resolving that disagreement.

While the book assumes no knowledge on the part of the professional, it attempts to be more than an introduction. What we have strived to do is write the text in a way that provides a solid background in special education law. The lawyer or other professional who seeks to do more detailed legal research should find the footnotes provide a solid foundation to begin that research.

One of the overriding themes of special education is that a child's educational programming should be individualized. As such, many of the cases in this area are fact specific. While the text cannot explore each of these case specific applications, the footnotes and appendices should provide you with research leads for more particularized research.

The book, by its very nature, is primarily limited to federal law in general and IDEA and Section 504 of the Rehabilitation Act of 1973 (§ 504) in particular. One of the difficulties dealing with special education law is the interplay of several federal statutes, primarily IDEA and § 504, and to a lesser extent 42 U.S.C. § 1983, as well as supporting federal regulations. Further there are often statutes and regulations affecting general education that affect special education. For example, the Education Department General Administrative Regulations (EDGAR) and the Family Educational Rights and Privacy Act (FERPA or the Buckley Amendments) play a significant role. Chapter 1 provides a general overview of IDEA and its interrelationship with § 504, § 1983, EDGAR and FERPA. In each of the succeeding chapters, the primary focus is on IDEA, however, full attention is also given to the impact § 504 has on the subject, as well as any additional federal statute affecting the particular area.

State law should always be checked. Each state has its own statutes and regulations implementing the IDEA. While these state statutes and regulations usually mirror the

federal statutes and regulations, this is not always the case. For example, federal statutes and regulations are silent on some points, and Congress has allowed states to develop independent standards in some areas. Further, while the state may not provide fewer rights, some states actually provide more substantive and procedural rights than required under IDEA. The addresses where copies of state regulations can be obtained, often at no cost, are listed in the Appendix.

Even the lawyer reading the footnotes may find some authorities with which he or she is not familiar. There are of course citations to court decisions, federal statutes and regulations. In addition, however, there are numerous citations to opinions written by the staff of two offices of the Department of Education: The Office of Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS), and its Office of Special Education Programs (OSEP). OSEP is responsible for monitoring compliance with IDEA while OCR is responsible for monitoring compliance with § 504. Each office, therefore, has occasion to interpret the regulations of the respective statutes. OCR and OSEP opinions, being the interpretation of the agency having written the regulation, are afforded considerable deference by courts. In areas where there are no court decisions, they may be particularly significant.

For the nonlawyer, a brief explanation of the primary authorities used is contained in the Appendix.

Portions of this work have appeared, often in significantly different form in the following law journals. The authors thank the journals for their permission to use the material in this book:

Guernsey and Sweeney, *The Church, The State, And the EHA: Educating the Handicapped in Light of The Establishment Clause*, 73 *Marquette Law Review* 101 (1990); Guernsey, *The Education For All Handicapped Children Act*, 42 *U.S.C. Section 1983 and Section 504 of the Rehabilitation Act of 1973: Statutory Interaction Following the Handicapped Children's Protection Act of 1986*, 68 *Nebraska Law Review* 564 (1989); Guernsey, *The School Pays the Piper, But How Much? Attorneys' Fees in Special Education Cases After the Handicapped Children's Protection Act of 1986*, 23 *Wake Forest Law Review* 237 (1988); Guernsey, *When the Teachers and Parents Can't Agree, Who Really Decides? Burdens of Proof and Standards of Review Under the Education for All Handicapped Children Act*, 36 *Cleveland State Law Review* 67 (1987–1988).

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As of 1997 5.5 million children were receiving special education services.¹

We refer to the statute as IDEA or the Act, except where quotations require reference to a previously used acronym such as EHA. We also have tried to inform the reader where significant changes have been made by the amendments.

¹ See H.R. Rep. No. 105–95. At 89. This statistic represents approximately 10 per cent of children age 3 through 17.

Note on Abbreviations

Special education law is replete with abbreviations beginning with the title of the act. The abbreviations are explained throughout the text. We have, however, as a matter of convenience listed below the more common abbreviations.

AIDS	Acquired Immune Deficiency Syndrome
DOE	Department of Education
EAHCA	Education for all Handicapped Children Act
EDGAR	Education Department General Administrative Regulations
EHA	Education for the Handicapped Act
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights and Privacy Act (Buckley Amendment)
HCPA	Handicapped Children's Protection Act of 1986
HIV	Human Immuno-deficiency Virus
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individualized Family Service Plan
ITDA	Infants and Toddlers with Disabilities Act
LEA	Local Education Authority
LRE	Least Restrictive Environment
MDR	Manifestation Determination Review
OCR	Office of Civil Rights (U.S. Department of Education)
OSEP	Office of Special Education Programs (U.S. Department of Education)
OSERS	Office of Special Education and Rehabilitative Services (U.S. Department of Education)
SEA	State Education Authority



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