

# Preface

In the United States, classroom visitors in the early 1970s would have been unlikely to see students with disabilities being educated alongside other children in general education. They might have noticed a few students sitting in the back of classes who, struggling to keep up with their classmates, left to get extra help from remedial teachers. Yet, the visitors would not have seen students with autism, intellectual impairments, visual impairments, hearing impairments, or physical challenges being educated in general education settings. Those students, if they received any education at all, would have been placed in separate classrooms or even separate schools.

That all changed in 1975 when Congress passed, and President Gerald Ford signed into law, landmark legislation, now known as the Individuals with Disabilities Education Act (IDEA). The IDEA mandates that states, and by delegation local school boards, provide free appropriate public educations (FAPEs) in the least restrictive environment to all students with disabilities. Classroom visitors today are very likely to encounter students with a wide range of disabilities being taught alongside their peers without disabilities. Students with disabilities today receive a wide range of special education and related, or supportive, services to assist them in receiving benefits from their educations.

This change in the education of students with disabilities has come gradually, with multiple amendments to the 1975 version of the IDEA and thousands of court cases interpreting the myriad provisions of the IDEA. Although the law and its implementation is constantly evolving, few would say that all children with special needs are being educated as well as they might be. It is a given that litigation will persist, and the law will continue to evolve.

This fourth edition of *Special Education and the Law* examines how federal and state courts continue to interpret the IDEA and its regulations, addressing the delivery of special education and related services to students with disabilities. The book is organized around the major procedural and substantive issues in special education law. Specifically, the book examines the substantive and procedural requirements that the IDEA, its regulations, and litigation have placed on school officials.

Among the major topics that this book addresses are the rights of students with disabilities to FAPEs, procedural due process, proper placement, the receipt of related services, discipline, and remedies if school officials fail to adhere to the IDEA. In so doing, we trace the legal history of special education while briefly discussing other statutes affecting the delivery of special education services, such as Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), the Every Student Succeeds Act (ESSA), and the Family Educational Rights and Privacy Act (FERPA).

Although the IDEA has not been amended since the last edition of this book was published in 2014, federal and state courts have issued decisions in more than 700 published cases involving special education, including two that reached the U.S. Supreme Court. Most of these judgments are consistent with prior case law, but many are noteworthy because they dealt with new issues or application of the statute to unique factual situations. Collectively, these court decisions provide school officials guidance on how the IDEA should be implemented on a day-to-day basis in our nation's public schools.

Most important, as a result of the Supreme Court's most recent decision on special education, in *Endrew F. v. Douglas County School District (Endrew F.)* in 2017, how lower courts now resolve cases under the IDEA's FAPE requirement has been modified. Prior to this decision, courts in some jurisdictions approved individualized education programs (IEPs) that provided some, albeit minimal, educational benefit to students with disabilities. As discussed at length in the book, in *Endrew F.*, the Supreme Court made it clear that this was not sufficient. In the second case, *Fry v. Napoleon Community Schools (Fry)* in 2017, the Justices established a test for lower courts to use in determining whether parents filing suit

under statutes other than the IDEA must first resort to that statute's dispute resolution procedures. As is discussed in the book, *Fry* has had an important influence on how some disputes between school boards and parents are settled.

Against this background, this edition of our book has been updated to include discussions of the significant judgments that the courts have handed down since 2013 that have impacted how educational officials in school systems throughout the country comply with the IDEA. Specifically, this fourth edition

- Addresses the ESSA and its application to special education
- Analyzes the Supreme Court's clarification in *Endrew F.* that the IDEA requires school boards to provide students with disabilities with more than minimal educational benefits along with how lower courts have implemented its dictates
- Adds information on recent litigation involving related services, assistive technology, and transition services
- Discusses new developments emerging from litigation over the IDEA's procedural requirements, such as its child-find obligations, evaluation procedures, and IEP development
- Examines the Supreme Court's decision in *Fry* about when parents must exhaust the IDEA's administrative remedies before filing suit under Section 504 and the ADA, including a review of the circumstances under which lower courts have required parents to use the IDEA's administrative process when bringing complaints
- Evaluates new developments about the remedies available to parents when school boards do not meet their obligations to provide FAPEs, such as awards of tuition reimbursement, compensatory educational services, and reimbursement of attorney fees, as well as when prevailing school boards can recover their legal expenses
- Revises and updates the discussions on the parameters for disciplining students with disabilities, including the use of time-out rooms and physical restraints
- Discusses new case law on developments regarding school boards' obligations under Section 504 and the ADA
- Adds new information on how school personnel must respond to situations when students with disabilities are bullied and/or harassed
- Includes a discussion on the recruitment and retention of qualified staff and how this can help avoid costly litigation

Further, this edition has enhanced special features:

- Additional tables and figures to highlight important aspects of the law
- Revised *Frequently Asked Questions* and *Recommendations* at the end of each chapter
- A new section at the end of each chapter posing *Questions for Discussion*
- Subheadings and text boxes that make it easier for practitioners to find information so that the book can better serve as a desk reference

As in previous editions, the book includes a brief glossary of terms that are neither defined nor explained in the text. Rather, the glossary is designed to define the legal terms with which readers may be unfamiliar.

In past editions we included appendices with internet resources, such as websites of state departments of education, special education services, and education law. These resources have now been placed online and are available at <https://resources.corwin.com/SPEDandthelaw4e>.

Much of the terminology previously used regarding special education is now considered politically incorrect. This has provided us with a challenge when discussing older court decisions that employ the terminology of their time. To our dismay, some of this outdated terminology is still used in statutes and regulations that have not been updated, as well as in some recent court opinions. Instead of translating those terms ourselves, and risk misinterpretation, we have at times described students as they were classified in the original court documents. We ask readers to understand that the terminology is that of the courts and not ours. On occasion we preserved the original language to illustrate how perceptions of students with disabilities have changed in light of the more appropriate contemporary terminology.

This book is not by any means intended to replace the advice and counsel of school board attorneys. Instead, this book is designed to help school officials, especially at the building level, develop a greater awareness of the requirements of the laws governing special education, in the hope that doing so will put them in better positions to implement the myriad legal obligations they must meet in serving children with disabilities and their parents. We caution readers not to rely on this book as their sole source of information. Thus, we encourage readers always to consult with their school board attorneys when difficult situations arise in providing special education services to their students with disabilities.

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