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The Legal System and How It Works

LEARNING OUTCOMES

After reading Chapter 1, you should be able to

- Outline the legal system and how the Constitution, statutes, regulations, judicial decisions, and administrative decisions and opinions apply to education for students with disabilities
- Describe the interrelationship of state and federal law as applied to students with disabilities

Introduction

Understanding the legal requirements for providing education to students with disabilities requires an understanding of the basis of law and how various laws relate to each other. This is an area of law that has a very dynamic relationship between constitutionally based requirements, statutory responses, regulations and administrative guidance interpreting statutes, and judicial opinions deciding cases pursuant to these requirements. The relationship between state and federal requirements is also critical in understanding this area of law. This chapter introduces the reader to how the law works so that the remainder of the text can be read and understood with that background.

State and Federal Laws

The United States Constitution and State Constitutions

The primary and basic source of law in the United States is the Constitution. Federal statutes passed by Congress must be based on some provision of the Constitution. State constitutions and statutes may go beyond what is provided in the federal law as long as there is no conflict between them and as long as state laws do not address areas reserved to the federal government, such as providing for the national defense.

The Constitution of the United States, because it is a general framework, does not specifically answer every question of law, and it has been subject to substantial interpretation over the past two centuries. The Constitution provides for the establishment of legislative, executive, and judicial powers of the United States as well as procedures for modifying the Constitution itself. In addition to the articles of the Constitution, there are 26 amendments to the Constitution. Of major importance to special education are the constitutional provisions for spending money to protect the general welfare[1] (which is the basis for the **Individuals with Disabilities Education Act [IDEA]**[2] and **Section 504 of the Rehabilitation Act**[3] as well as the fourteenth amendment, providing that no state shall "deprive any person of life, liberty, or property, without due process of law . . . nor deny . . . equal protection of the laws").[4] It should be noted that there is no constitutional mandate requiring that the federal government provide education. Under the tenth amendment to the Constitution, "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States."[5] All states have, by virtue of that authority, provided for public education, either by state constitution or by state statute or both. States are, therefore, required under the due process and equal protection clauses of the fourteenth amendment to provide education on an equal basis and to provide due process before denying equivalent educational programming to different students. As the following chapters demonstrate, however, it is not always clear what it means to be "equal," and it is not always easy to determine what "process" is due. In addition, the fourteenth amendment applies only to states or state agents acting within state authority. When an individual teacher or other educator acts without a specified state policy spelling out whether the particular act is permissible or not, it is not always clear whether the individual is acting within state authority so as to meet the "state action" element of the fourteenth amendment. For example, if an administrator refuses to return phone calls of a parent of a student with a **disability**, and, as a result, the appropriate programming for that student is substantially delayed, it is unclear whether the administrator's acts would be deemed to be within the authority of the state.

Statutes

The Constitution provides that Congress shall have the power to "make all Laws . . . necessary and proper for carrying into Execution the foregoing Powers."[6] Pursuant to that authority, Congress has enacted an enormous body of laws that cover everything from civil rights in the workplace to aviation safety laws.

The federal statutes of most relevance to special education are the Individuals with Disabilities Education Act (IDEA), the **Americans with Disabilities Act (ADA),** and Section 504 of the Rehabilitation Act. These were passed pursuant to the constitutional provisions that authorize the expenditure of money to protect the general welfare. The IDEA authorizes the expenditure of federal funds to subsidize special education provided by the individual states. Section 504 of the Rehabilitation Act requires that programs receiving federal financial assistance not discriminate on the basis of disability. The ADA prohibits public and private schools from discriminating on the basis of disability.

Most statutes of relevance to education generally are state statutes rather than federal statutes. Although education is highly regulated indirectly by federal funding programs, education is for the most part a state function, with some functions delegated to local school districts. All states have as part of their overall educational program a plan for providing education to students with disabilities within the state. By having a plan that complies with the guidelines set forth in the IDEA, all states qualify for federal funding to assist in providing that education to students with disabilities.

Regulations and Guidelines

Statutes are usually passed as a general framework of policy relating to a particular issue. Congress and state legislatures generally delegate to administrative agencies the task of developing detailed regulations pursuant to federal and state statutes. These regulations must be within the authority of the statute. Federal regulations and some state regulations are finalized only after an opportunity for **notice** and public comment. If a regulation is developed within the framework and limitations of the statute, it has the weight of law.

In addition to regulations, administrative agencies often develop guidelines that suggest how the laws administered by the relevant agency should be interpreted. While these do not have the weight of law, they are often given a great deal of deference by both policymakers and courts.

Special education is an area in which elaborate sets of regulations exist at both the federal and state levels. At the federal level, the IDEA regulations spell out in considerable detail the procedures and programming that must be provided to children with disabilities in order for states to receive federal funding.[7] States must submit their state plans to the federal Department of Education to qualify for IDEA funds. States may go beyond what is required in the IDEA regulations as long as their regulations are not inconsistent with the federal requirements. For example, some states have broadened the definition of which children are entitled to special education by including gifted children in their special education programming. States also often regulate areas such as bus transportation, pupil/teacher ratios, and other issues that are more appropriate for state regulation.

Case Law

Case law is the law developed in the courts. Historically, it was a means of establishing law before there was a great deal of written statutory law. Judges would render opinions

that incorporated custom. This early law was known as **common law**. Most judicially rendered law today is opinion not about custom but rather interpreting a constitutional provision or statute as it applies to a particular set of facts. Courts are limited to rendering opinions about the specific facts in the cases before them. Pronouncements of a broader nature are not prohibited, but they do not have the force of law. Broader pronouncements are known as *dicta,* and they provide guidance to potential litigants about their chances of success should they decide to seek a remedy in the courts.

In the United States, there is a fairly universal acceptance of the concept of **stare decisis**, which means that courts are bound to render decisions consistent with previous decisions in the same jurisdiction and the higher courts over that jurisdiction. If a court reaches a result different from a previous decision, it must usually justify the decision by explaining why the set of facts before it is different, or why circumstances have changed, or why the previous decision was wrong. So that judicial law can be known to the public, most judicial opinions at the federal level (and a significant portion of opinions within state judicial systems) are published. These published opinions are available in law libraries and often through Internet sites. Part of a legal education includes training in how to find relevant court opinions as well as how to research statutes and regulations.

Administrative Decisions and Opinions

Administrative decisions and opinions are issued at the federal, state, and local levels by administrative agencies. The federal Department of Education often issues interpretive statements and letters of opinion. Some state educational agencies do this as well. At both the federal and state levels, specific cases are resolved by administrative agencies, which often issue written findings. While these are important as guides to how an agency is likely to interpret or decide a particular matter, such decisions and opinions do not carry the same weight or have the same precedential value as statutes, regulations, and judicial decisions. Because of their lesser value, such opinions and decisions are not a substantial basis for the material included in this text. In addition, these statements are not consistently reported publicly in the same way as statutes, regulations, and judicial decisions; therefore, having a current comprehensive set of findings is difficult.

It is very useful for individuals involved with special education issues to obtain access to the administrative decisions and opinions in their particular state. The difficulty or ease of obtaining these statements varies dramatically from state to state. For that reason, individuals should initially contact their state education agencies to determine the best means of accessing such materials. The Internet has made these decisions somewhat more accessible.

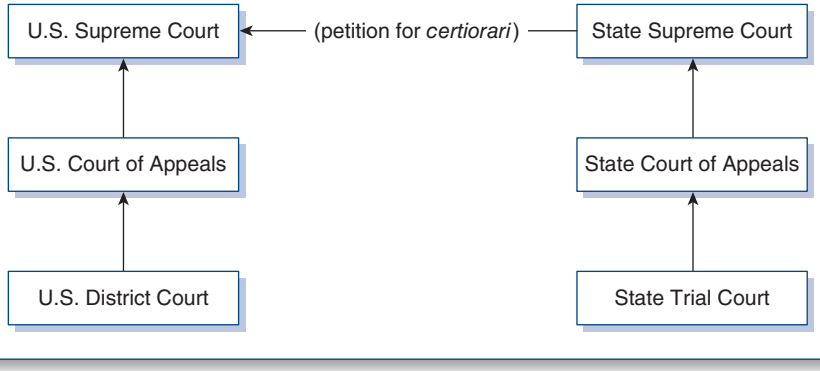
Federal regulations must be published in the *Federal Register* with an opportunity for public comment before they are finalized. Federal agency opinion letters, however, do not go through the notice and public comment process. For that reason, they do not have precedential value, although they are often accorded some deference by courts and followed by schools. Unless one has access to a loose-leaf service or similar distribution of such materials or can access them through the Internet, obtaining these letters and decisions may be difficult.

The Judicial System

To understand which court opinions on the relevant subject matter apply to a specific case, it is necessary to understand the court system in the United States. The system includes both federal and state courts and various appellate levels within those systems.[8]

In the United States, there are really 51 court systems: the federal court system and a court system in each of the 50 states. Each system has the power to decide both criminal cases and civil cases, but the jurisdiction of the federal courts is limited by the Constitution. Article III, which defines the judicial power of the federal courts, says that this power extends only to cases "arising under this Constitution [and] the Laws of the United States."[9] This limitation on the types of cases that can be decided by courts of the United States is the most important limitation for those who deal with legal issues in education. Often referred to as "federal question jurisdiction," it means that cases concerning the fourteenth amendment's equal protection provision or cases involving sex discrimination in education (which is prohibited by federal law) can be decided by federal courts. On the other hand, a case involving alleged defamation cannot be decided by a federal court but would generally have to be tried in a state court because it is based on state law only. State courts, in addition to dealing with a variety of criminal and civil matters, also have the power to decide cases concerning issues of federal statutory and constitutional law. Because many legal problems in education involve federal questions (either constitutional or statutory), litigants in such cases have a choice as to which court system (federal or state) they will initially choose. A case filed in a state court can reach the U.S. Supreme Court if a controversy still exists after it has been heard and decided by the highest state court. Figure 1.1 shows the alternative paths of a judicial controversy.

Figure 1.1 Alternative paths of a judicial controversy



The federal judicial system and most state judicial systems are three-tiered. They have a relatively large number of trial courts, where the facts are determined and where the law is applied to the particular facts; a smaller number of intermediate appellate courts, which review the way the law has been applied to the facts; and one final court of appeals, which is the highest court of the particular jurisdiction. The names of these courts vary from state to state; they are often called superior court, court of appeals, and supreme court,

respectively; but this is not always true, so care should be taken in determining whether one is reading a case from a trial court or from the highest court of a state. In New York State, for example, the lowest trial court of general jurisdiction is the Supreme Court, whereas the state's highest court is the Court of Appeals. In the federal system, the nearly 100 trial courts are called United States District Courts, the 13 courts of appeals are called the United States Courts of Appeals, and the highest court is officially called the United States Supreme Court.

Judicial controversies generally move from the trial court level to the intermediate appellate court level and, finally, to the highest court of the jurisdiction. Additionally, a case can move from the highest court of a state to the U.S. Supreme Court, if the losing party submits a request to the Supreme Court to consider the case. This request usually comes in the form of a "petition for certiorari," which the U.S. Supreme Court can either accept or reject. After careful consideration, a vote is taken by the nine justices; if four vote in favor of considering the case, the justices will issue a "writ of certiorari" asking that the case be sent to the Court. This often occurs when the various federal courts of appeals are in conflict over a particular issue.

When reading one of the many cases decided by the various state and federal courts, an important point to consider is whether or not the particular decision of the court (often called the court's "holding") is binding in your state or region. Decisions of the Supreme Court are binding everywhere, but the decisions of the lower federal courts are binding only in their respective territories. All federal courts of appeals (except for the one in Washington, DC, and one dealing with special patent and copyright issues) cover more than one state, and there is more than one federal district court in most states. A map of the jurisdictions covered by the federal courts of appeals is contained in Appendix A. The opinions of state courts are binding only in the state where they are decided. However, decisions from courts other than the one deciding the case may be used as precedent; although not binding, these decisions are often considered persuasive in other jurisdictions.

Regulatory Decision Making

Congress sometimes delegates to an administrative agency the function of deciding disputes or determining whether a statute has been violated. The reason is often one of efficiency and quality of decision making. It is costly and time-consuming to litigate disputes in court. A resolution before an administrative hearing officer is often quicker and less expensive, although it is not always so. In addition, in some cases, an administrative decision maker may have a particular area of expertise that could lead to better decisions than might be made by a judge in court.

Special education is one of the areas in which Congress has delegated dispute resolution and other decision making to administrative process. Where parents or the administrative agency dispute the appropriateness of the proposed special education program, the IDEA sets up a detailed framework providing an opportunity for an impartial hearing, with a right of review by the state educational agency and a subsequent right of review in state or federal court. In addition, anyone believing that the school has violated Section 504 of the Rehabilitation Act or the ADA may complain to

the federal Department of Education, which may then investigate and possibly hold a hearing to determine whether a violation has occurred. In this forum, the complaining party is not a party in the hearing. For that reason, it is not really a hearing to provide a remedy to the individual complainant but to determine whether a violation has occurred and whether corrective action, such as withholding future federal financial assistance, is an appropriate remedy. Because this administrative decision making does not really resolve the problem for the individual complainant, many individuals choose to go directly to court to seek relief. As later chapters indicate, whether doing so is permissible is not entirely clear. Chapter 15 clarifies that even if one can claim a violation of Section 504 or the ADA in court, most claims involving special education must be decided under the IDEA, and the parents must first seek relief through the impartial hearing process mentioned above.

Relationship of Constitutional Law, Statutory Law, Regulatory Law, and Case Law in the Development of Special Education Laws

Laws are not developed by the various governmental entities (Congress, administrators, judges) in a vacuum. Often, laws are made by one entity as a response to developments in other arenas. State and federal laws are frequently interactive in this process. The development of special education law is an excellent example of this dynamic development of policy.

While many states had laws providing for some education for students with at least some types of disabilities before the 1970s (such as blindness and deafness), the real watershed year for special education law was 1971. In that year, and a year later, two judicial opinions interpreted the fourteenth amendment to the United States Constitution as follows: Because the District of Columbia and the Commonwealth of Pennsylvania provided education to children within their jurisdictions, they were denying due process and equal protection to children with disabilities by excluding these children from the educational system.[10]

As a result of these federal judicial opinions and the number of similar lawsuits awaiting final decision throughout the United States, Congress responded. To bring consistency to and to assist states in what appeared to be constitutionally mandated education of students with disabilities, Congress created a federal program of subsidization.[11]

The program that resulted was set out in the **Education for All Handicapped Children Act (EAHCA)**, passed in 1975. This act made federal funds available to states that developed plans to ensure education for all children with disabilities who were of school age. This education was to be individualized, provided at no cost to the parents, made available in the least restrictive appropriate setting, and provided under required procedural safeguards. In 1990, the name of the act was changed to the Individuals with Disabilities Education Act (IDEA). Two other major amendments to the IDEA (in 1997 and 2004) further developed the requirements of the law but did not substantially change the primary principles and procedures under the original 1975 statute.

The statute itself set the general framework, but a great deal of detail was needed to clarify what was meant by the various provisions relating to procedural safeguards. The Department of Health, Education, and Welfare (now separated into the Department of Education and the Department of Health and Human Services) developed an elaborate set of regulations to spell out these details. These regulations became effective in 1977 after extensive public comment. As of now, all states have elected to seek funding support under the IDEA, and, as a result, they have all developed state statutes and regulations incorporating the requirements of the IDEA and usually providing for additional requirements relating to special education.

Even with detailed statutory and regulatory requirements under EAHCA/IDEA, a number of issues became the subject of debate. These issues included matters such as whether states were required only to provide the same number of school days to students with disabilities that they provided to students without disabilities, whether residential placements must be paid for entirely by the state and under what circumstances, and whether services such as **catheterization** must be provided at no charge. Several issues reached the level of the Supreme Court, which then provided its interpretation of the law. When Congress disagrees with the Court's interpretation, Congress can rewrite or pass new legislation. One Supreme Court case that prompted Congress to amend the IDEA to clarify its intent was the 1984 case of *Smith v. Robinson.*[12] In that case, the Supreme Court held, among other things, that under the IDEA as it was then written, parents could not recover attorneys' fees. Congress subsequently passed the **Handicapped Children's Protection Act (HCPA)** in 1986 to allow for attorneys' fees in certain circumstances under the IDEA. Already there has been a substantial amount of litigation concerning situations in which those attorneys' fees can be awarded.[13] Interaction among the various agents in the development of law has continued as the interpretation of the IDEA continues to evolve.

SUMMARY

The basic legal framework applicable to education of students with disabilities is currently found primarily in a federal statute, the IDEA, and in its regulations and the state statutes passed in conjunction with the federal law. These requirements developed as a result of the dynamic workings of our legal system. The United States Constitution (through the fourteenth amendment equal protection and due process requirements) was interpreted by federal courts (in *Pennsylvania Association of Retarded Children [PARC] v. Pennsylvania* and *Mills v. Board of Education*), which set out a general framework for what the Constitution required of states in providing special education. The general framework of the decisions was then the basis for the passage of a federal statute (the IDEA) and the detailed regulations developed pursuant to it.

Although the IDEA and its regulations now are the primary source of law for special education, numerous judicial interpretations of the IDEA are essential additional reference points. The Supreme Court has issued several opinions clarifying

certain issues but leaving others unresolved. An enormous body of case law at lower court levels continues to provide additional and sometimes conflicting interpretations of the IDEA. Statutory amendments have been passed in response to judicial decisions and recognized gaps or needs for clarification in the statute.

With this expanding body of statutory, regulatory, and judicial law, it might seem that answers to most questions about what is required of schools in providing special education would by now be found within existing laws. As the following chapters illustrate, however, many questions remain unanswered, and it is likely that the development of law on these issues will continue for some time.

Appendix A provides a more detailed explanation of the American legal system, the way it works, and information on how to stay abreast of legal developments.

QUESTIONS FOR REFLECTION

1. Why doesn't Congress develop all the details of the IDEA and other statutes rather than leaving that to administrative agencies?
2. Is it good policy to enact a statute that may be intentionally somewhat vague on certain points?
3. Which is the fastest and most efficient way to develop law—through the court system or the legislative process? What are the advantages and disadvantages of each?

KEY TERMS

Americans with Disabilities Act (ADA) 3
case law 3
catheterization 8
certiorari 6
common law 4
disability 2
Education for All Handicapped Children Act (EAHCA) 7
Handicapped Children's Protection Act (HCPA) 8
Individuals with Disabilities Education Act (IDEA) 2
notice 3
Section 504 of the Rehabilitation Act 2
stare decisis 4

WEB RESOURCES

Code of Federal Regulations
http://www.gpoaccess.gov/cfr/

This link is to the Code of Federal Regulations homepage. The website allows users to search for all regulations promulgated by the U.S. Department of Education (Title 34), including those regarding the Individuals with Disabilities Education Act (IDEA).

Office for Civil Rights

http://www.ed.gov/about/offices/list/ocr/index.html?src=oc

This homepage for the U.S. Department of Education's Office of Civil Rights describes what the Office's role is in enforcing civil rights laws, including those affecting special education. The site also contains links to various laws pertaining to special education and a "reading room," which posts federal publications regarding special education law.

NOTES

1. See *U.S. Const.* art. I, § 8, cl. 1.
2. 20 U.S.C. §§ 1400 *et seq.*
3. 29 U.S.C. § 794.
4. See *U.S. Const.* amend. XIV.
5. See *U.S. Const.* art. X.
6. See *U.S. Const.* art. I, § 8, cl. 18.
7. See 34 C.F.R. §§ 300.1–300.818.
8. The following four paragraphs and the chart are from Louis Fischer & Gail Paulus Sorenson, *School Law for Counselors, Psychologists, and Social Workers,* published by Allyn & Bacon, Boston, MA. Copyright © 1985 by Pearson Education. Reprinted with permission of the publisher. See also Appendix A, *Education and the American Legal System.*
9. *U.S. Const.* art. III, § 2, cl. 1.
10. This is a somewhat simplified statement of the holdings in *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania,* 334 F. Supp. 1257 (E.D. Pa. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Mills v. Board of Education,* 345 F. Supp. 886 (D.D.C. 1972).
11. The history of these developments is discussed more fully in Chapter 2.
12. 468 U.S. 992 (1984).
13. See Laura Rothstein & Julia Irzyk, *Disabilities and the Law* § 2:51 (Thomson West 2012) and cumulative supplements.