

# Special Education Advocacy

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MATTHEW  BENDER

# Dedication

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In Memory of Janice Seiner Colker

R.C.

For Michael, who continuously inspires, supports and encourages me and for Ava and Jack, who  
make everything worthwhile

J.W.



# Preface: An Advocacy Approach

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This is a highly unusual set of materials both with respect to its content and how it was produced. In early 2010, Professor Colker began approaching clinicians who were teaching students how to be advocates for children in the special education area to see if they might be interested in developing a set of teaching materials. The response was overwhelming. Dozens of people indicated an interest in using such materials in the classroom and nine professors indicated an interest in helping to write such material. This material is a result of that collaboration. Julie Waterstone joined Ruth Colker as an editor on the overall manuscript and eight other individuals joined them as authors of discrete chapters.

Ruth Colker authored the first chapter in which she provides a brief historical overview of the development of special education law in the United States. The Appendix contains the current statute and regulations as well as thirteen of the most important cases in the field. Some of these cases provide additional historical information about the roots of special education law in the United States.

Chapter Two provides an overview of how to initiate a special education case. Yael Zakai Cannon, Practitioner-in-Residence at the Washington College of Law at American University and Laura N. Rinaldi, Clinical Instructor, Juvenile and Special Education Law Clinic, University of the District of Columbia David A. Clarke School of Law, wrote that chapter together. This chapter reflects their work at the Children's Law Center before working at special education clinics at their respective law schools.

Chapter Three discusses the "child find" and referral obligations under the Individuals with Disabilities Education Act (IDEA). It was written by Esther Canty-Barnes who is a Clinical Professor of Law and Director of the Special Education Clinic at Rutgers-Newark School of Law. She represents indigent parents and caregivers of children with disabilities in need of educational services, and teaches in this area, and has done specialized work on behalf of children in foster care.

Chapter Four discusses the definitions of disability used in the IDEA and related statutes as well as how the assessment instruments are used to classify children as disabled. Professor Colker authored this chapter drawing on her empirical work in disabilities studies as well as experience in working with parents of children with disabilities to help their children be found eligible for services under the IDEA or other federal statutes.

Chapter Five discusses the process of developing an "Individualized Educational Plan." Jane R. Wettach, Clinical Professor of Law, Duke Law School, and Brenda Berlin, a Senior Lecturing Fellow and Supervising Attorney in the Children's Law Clinic, Duke Law School, co-authored this chapter. Professor Wettach is the first director of the Law School's Children's Law Clinic and teaches Education Law. She has been working in the special education area since 1994 and brings her vast knowledge to this chapter. Before coming to Duke in 2001, Professor Berlin was Director of the Pro Bono Program and a Staff Attorney at the Legal Aid Society of the District of Columbia where she represented low-income individuals in the areas of family law, landlord and tenant law and public benefits.

Chapter Six discusses intervention for young children under Individualized Family Services Plans. This chapter was written by Jennifer N. Rosen Valverde. Professor Valverde is a Clinical Professor of Law at Rutgers-Newark School of Law. Her work with young children reflects her M.S.W. and law degree. She currently supervises law and social work students in the representation of indigent parents of children with disabilities in early intervention and special education matters.

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## ***Preface: An Advocacy Approach***

Chapter Seven discusses school discipline issues for children with disabilities. It was co-authored by Professors Waterstone and Wettach. Professor Waterstone is the first director of the Children's Rights Clinic at Southwestern Law School where she focuses her work on special education and school discipline. This chapter reflects their collective experience representing children with disabilities who also have discipline issues.

Chapter Eight discusses the foster care and child welfare systems as they relate to special education. Professor Valverde worked with her colleague Randi Mandelbaum to author this chapter. Professor Mandelbaum is a Clinical Professor of Law and Director of the Child Advocacy Clinic at Rutgers-Newark School of Law where she specializes in the needs of low-income children and their families.

Chapter Nine discusses dispute resolution under the IDEA. This chapter was written by Professor Canty-Barnes. Chapter Ten was written by Professor Cannon and discusses the remedies available under the law of special education.

Chapter Eleven, authored by Joseph B. Tulman, focuses on delinquency, the criminal justice system and special education issues. Joseph Tulman is Professor of Law, University of the District of Columbia David A. Clarke School of Law, and Director of the Took Crowell Institute for At-Risk Youth. Professor Tulman directs the law school's Juvenile and Special Education Law Clinic. He has been widely recognized for his work on behalf of juveniles and brings that experience to his chapter.

In this book, we have collaborated to try to provide students and lawyers with the basic tools they need to be effective advocates in educational cases involving children with disabilities. Each of us has done some practical work in this field and has been disappointed with the materials available for teaching students how to be a child's advocate in this field. This book does not seek to offer a balanced treatment of how to represent school districts. It is designed to enhance the knowledge and skills of special education advocates who work on behalf of children.

Our perspective in developing these materials is that statutory and regulatory material is generally more useful than case law. Hearing officers usually cite few judicial decisions in their opinions and case law discussions are rare at meetings with school district personnel. The everyday tools of special education advocates are statutes, regulations and general material from educational psychology. Hence, we have collected a set of cases at the end of this book but the primary focus is on statutory and regulatory material, as well as practical examples.

This is not a "hide-the-ball" set of materials. By using examples from real cases, we hope to illuminate the major principles that are important to successful advocacy on behalf of children with special needs. We hope you find these materials helpful as well as accurate. We welcome any feedback as we strive to improve these materials over the years.



# Acknowledgements

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This project could not have been accomplished without the generous contributions of many individuals. The Executive Acquisitions Manager at LexisNexis, Leslie R. Levin, had the confidence in us to support our work as the sole textbook dedicated to Special Education Advocacy. Keith D. Moore, Editor of the Academic Publishing Team at LexisNexis, was a tremendously helpful editor at all stages of this project. We thank you for your support.

Throughout this project, many members of the staffs at the Ohio State University Moritz College of Law and the Southwestern Law School provided outstanding editorial and technical assistance. In Columbus, Ohio, Jenny Pursell, a Faculty Assistant, provided extensive technical assistance to Ruth Colker. Kathleen Patterson and Joseph Brown, Moritz law students, also provided important legal research. In Los Angeles, California, Jahmy Graham, Legal Clinic Assistant, also provided extensive technical assistance to Julie Waterstone. Jenny Rodriguez-Fee read countless drafts, provided invaluable feedback, and drafted the sample due process complaint. Melany Avanesians provided extensive help in organizing, cite checking, and proof reading the materials.

We also would like to thank the following faculty members who were generous enough to write chapters of this book while juggling a heavy client load in their own clinics: Brenda Berlin, Yael Zakai Cannon, Esther Canty-Barnes, Randi Mandelbaum, Laura N. Rinaldi, Joseph B. Tulman, Jennifer N. Rosen Valverde, and Jane R. Wettach.

The views herein, of course, reflect only those of the authors and contributors and not any university or law school.

Ruth Colker  
Columbus, Ohio

Julie Waterstone  
Los Angeles, California

November 2010



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