

Special Education Law

Special Education Law

Cases and Materials

FIFTH EDITION

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To Joanne Kinoy—M.W.

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Preface

In this book, Sarah Redfield, Ralph Mawdsley, and I undertook the challenging task of developing materials for teaching Special Education Law both in schools of education and in law schools. Instructors in education schools have long complained about the lack of books on the subject that include suitably edited judicial opinions and reliable accounts of how the law operates. Instructors in law schools complained about an absence of any usable books for their courses. Our mission was to satisfy both complaints and meet both needs. We sought to create a book that would be accessible to students whose background is in education rather than law but would still include the original court cases and comprehensive, reliable descriptions of the law, in addition to provocative comments and discussion questions. At the same time, we tried to produce a law school casebook that would challenge second- or third-year students in either classroom or clinical courses and would provide the customary mix of cases, bridge materials, and questions for class discussion. The necessary background information about the theory and practice of special education and disability civil rights is found throughout the cases and in the materials we have contributed.

The first chapter of the book, on Core Concepts, introduces many of the basics of the course. We tried in writing the rest of the book to make the chapters sufficiently independent of each other that an instructor with limited class hours can do some skipping around to cover those topics that are the most useful to the students.

While we were in the final stages of editing the original edition of this book, Congress passed and sent to the President the Individuals with Disabilities Education Improvement Act of 2004, which reauthorizes and amends the basic federal special education law. We knew of the pending legislation, but, like others working in the field, were uncertain which version would ultimately pass both houses, or if anything would pass at all. The new statute became effective, for the most part, July 1, 2005; final regulations were issued in 2006. The Act left the core of the IDEA intact, and in fact made fewer changes than many observers anticipated. The Second Edition included updates for the statutory and regulation changes not covered in the original edition, and included updates for new caselaw and other developments. The Third Edition updated the Second Edition and drew attention to emerging controversies over matters such as eligibility for special education and services under section 504 of the Rehabilitation Act. The Fourth Edition provided many more updates, including new cases on eligibility, damages, and other topics and

coverage of the then-new Infant and Toddler Program regulations. This Fifth Edition, prepared by Mark Weber, is a major revision, adding the landmark decisions in *Fry v. Napoleon Community Schools* and *Endrew F. v. Douglas County School District RE-1*, and replacing many of the older cases with more recent decisions. Issues of eligibility for services have become so important that a separate chapter has been devoted to that topic, and residency is now a unit in that chapter. As in previous editions, to keep the case reports readable, many citations to the case record and to other cases have been deleted, and these deletions are not indicated. Major deletions of case text are indicated with ellipses. Footnotes are omitted unless especially important.

Although this Fifth Edition is a solo project, it builds on the ideas, structure, and content of the earlier editions. Sarah Redfield deserves special credit for the original idea of writing the book. She was also responsible for the conception and plan for the introductory chapter, and organizational work and writing for additional chapters, particularly those on Evaluation, Eligibility, Individualized Education Programs, and others. Hers was the wonderful idea of including a glossary with the book, and the glossary continues to bear her imprint. Ralph Mawdsley did yeoman work on the original chapters on Free, Appropriate Public Education, Private Education, and Post-Secondary Education. He contributed research and text to other chapters as well. All three authors collaborated on revisions up through the Fourth Edition as well as on several annual updates distributed to users of the book.

All three of us owe many debts to others for their assistance with the book. Mark Weber would like to thank his research assistants, Suzanne Shmagin, Sara E. Mauk, Kim Brown, Ben Johnson, and Antonio Del Fiacco, as well as Dean Glen Weissenberger, who provided support from the research fund of the DePaul University College of Law. Ralph Mawdsley wishes to thank his research assistant, James L. Mawdsley, as well as Dean James McLoughlin for his encouragement and support of this project. Sarah Redfield thanks Dean John Hutson at Franklin Pierce Law Center and Dean Elizabeth Rindskopf Parker at the University of the Pacific McGeorge School of Law for their unflinching support of this work. She also thanks all of her students whose thinking and work contributed to her own learning, and particularly Krysten Hicks, Julie Robbins, and Janelle Ruley at Pacific/McGeorge and Will Toronto at Pierce for their valuable research assistance. We all thank the good people of Carolina Academic Press and previously, LexisNexis, for their faith in this project and, in particular, Keith Moore and Susan Trimble for their thoughtful, accurate, and tireless editorial work.

We hope to hear from instructors about experiences with the book and suggestions for improving it. Correspondence may be directed to Mark Weber, mweber@depaul.edu.