
Preface

WHY WE WROTE THIS BOOK

In 1975 Congress passed landmark legislation, originally known as the Education for All Handicapped Children Act (EHCA), that created a federal mandate for states to develop educational programs for students with disabilities. The act requires states, through local school boards and other educational agencies, to provide a free appropriate public education for all students with disabilities. Currently known as the Individuals with Disabilities Education Act (IDEA), the title that we use throughout this book for consistency, this law was initially passed, in part, in response to Congress's finding that far too many students with disabilities had been completely excluded from the educational system. Most of the students who were excluded were those who were difficult for school personnel to handle. This included students who exhibited behavior problems due to their disabilities. More than a decade after the IDEA was enacted, in 1988, the U.S. Supreme Court in *Honig v. Doe* acknowledged that one of the reasons the law was passed was to prevent school administrators from excluding students with disabilities who had behavior problems.

Ironically, none of the provisions in the original IDEA specifically addressed the discipline of special education students. Even so, a vast body of case law quickly developed as school administrators struggled with the challenge of maintaining safe school environments while meeting the mandates of the new law. Much of this case law attempted to strike a balance by allowing school officials to discipline students with disabilities without depriving them of their rights under the IDEA. It was not until 1997 that Congress inserted detailed language into the IDEA to address disciplining of students with disabilities. The IDEA's discipline provisions were modified as part of another amendment to the IDEA in 2004.

Together these two amendments codified much of the case law that had developed. More important, these modifications provided school officials with much needed guidance on how to discipline students with disabilities. The success of these amendments is evidenced by the noticeable decline in litigation over disciplinary issues since their implementation.

School officials are often heard to lament that students with disabilities are immune to the disciplinary process. This statement could not be further from the truth. The fact is that students with disabilities may be disciplined when they violate school rules. However, the process for disciplining students with disabilities is different from that used for the general population. The IDEA and its regulations have set procedures in place to ensure that the rights of students with disabilities to a free appropriate public education in the least restrictive environment are not circumvented by the disciplinary process. In other words, these procedures have been implemented to prevent school boards from excluding students who have behavior problems, as was the case prior to the enactment of the original version of the IDEA in 1975. Unfortunately, due to the long history of exclusion, the courts and Congress found it necessary to provide students with disabilities with additional protections to ensure that the disciplinary process could not be used as a subterfuge for removing them because their disabilities present unique challenges.

The purpose of this book is to provide school administrators with the knowledge needed to discipline students with disabilities properly without violating their rights under the IDEA. Although every situation is unique, a thorough knowledge of the law will help school administrators make legally correct decisions that can withstand legal challenges. In this respect, this book reviews the IDEA provisions pertinent to discipline and analyzes the case law that has developed over the years. The book has been designed to provide an exhaustive analysis of the legal requirements and suggestions on how each of the mandates can be implemented.

WHO SHOULD READ THIS BOOK

This book is intended primarily for building-level school administrators who are on the front lines of dealing with disciplinary issues on a daily basis. As such, it is specifically geared toward school principals, assistant principals, guidance counselors, and special education practitioners. It will also be useful for district-level officials, especially special education administrators, who will often be called in to assist in difficult or contentious situations. It may also be used as a supplementary text in school law courses.

As with our other books, this one is not intended to replace the advice and counsel of school board attorneys. Rather, the book is designed to make

school personnel more aware of how various laws interact with the rights of individuals with disabilities in school settings. We hope that educators who understand these laws will be in a better position to implement their myriad of legal requirements and make legally correct decisions. Even so, we caution readers to consult their school board attorneys when difficult situations arise.

HOW THE BOOK IS ORGANIZED

Writing this book presented several organizational challenges. Insofar as many of the subtopics interact with each other, it was difficult to decide the order of the chapters and even the subtopics within each chapter. In some respects our decisions regarding the placement of subtopics was arbitrary. For example, many of the IDEA's procedural provisions apply to more than one type of disciplinary sanction (e.g., a provision could apply to an expulsion or to a proposed transfer to a more restrictive setting). Rather than repeat the discussions of procedural issues, we have covered them at the first appropriate opportunity and simply referred back to the original coverage when they apply to topics discussed later. Even so, some repetition of concepts was necessary to present a clear picture of the legal requirements in each of the subtopics covered. We also recognize that this book may be used as a desk reference and may not always be read cover-to-cover. For that reason, repetition is also necessary.

We also struggled with language and terms throughout the book. Recognizing that our primary audience is school personnel, we have tried to keep the use of legal terminology to a minimum. In the few instances where it has been necessary to use a legal term, we have tried to define it in context. We have also included a brief glossary of terms, acronyms, and abbreviations at the end of the book. Over the years the terminology used to identify various disabilities has changed. Again, we have made an attempt to use the terminology that is current in the field of special education. Moreover, the written opinions of many of the court cases we review in this book contain outdated terms. Rather than translate the vocabulary used by the courts, with the chance of not doing so correctly, when discussing specific cases we have used the terms found in the written decisions themselves. The result is that in some instances the terminology used may be outdated or may not be politically correct. We ask the readers' understanding that the language used is that of the courts and not ours.

The first chapter serves as an introduction to the American legal system. In including Chapter 1 we assume that many readers may not have an understanding of how the legal system works. Thus, we provide information about the various levels of our court systems. We also provide guidance on accessing and using legal materials.

Chapter 2 provides thorough information on the legal issues involved with disciplining students in general. Admittedly, the discussions in this chapter apply more to students who do not have disabilities. We included this because we think that readers will benefit from a thorough grounding in the law as it applies to students in general before delving into the intricacies of disciplinary sanctions as applied to students with disabilities. In this respect, Chapter 2 covers general issues such as suspensions, expulsions, and due process along with more specialized topics such as locker searches.

The third chapter presents an overview of the three major laws affecting special education: the IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. Chapter 3 also includes a review of the case law that developed prior to the inclusion of disciplinary provisions in the IDEA. We provide this “history lesson” with the knowledge that we need to understand where we have been before we can move forward. Insofar as the current disciplinary sections of the IDEA are largely based on this prior case law, this history helps us to understand how the statutory mandates should be implemented.

Chapter 4 outlines the procedures school officials must follow when contemplating the removal of students with disabilities from the general education setting for disciplinary purposes. In addition to discussing suspensions and expulsions, Chapter 4 provides detailed information about functional behavioral assessments, behavior intervention plans, and determining whether students’ misbehavior is a manifestation of their disabilities, an important distinction.

The fifth chapter presents information about how school administrators can transfer students with disabilities to other, possibly more restrictive, educational settings. Chapter 5 includes a discussion about the IDEA’s normal change in placement procedures along with the special circumstances where students can be moved to interim alternative educational settings or even be barred from attending their former placements altogether.

In the sixth chapter we provide information about other disciplinary issues that arise in the schools. Chapter 6 begins with a review of litigation concerning minor disciplinary practices that may be used with special education students. The chapter also reviews the related subjects of the rights of students not yet identified as having disabilities and those who are no longer receiving services under an individualized education program (IEP). Chapter 6 closes with a discussion of the interaction between schools and the juvenile justice system.

The seventh and final chapter summarizes the major points made in the book and provides readers with some practical advice on meeting the various legal requirements. Chapter 7 also contains sample forms that may be used in the disciplinary process.

In the resources at the end of the book we have reproduced the applicable disciplinary provisions of the IDEA from the *United States Code* and the *Code of Federal Regulations*. We have also included an edited version of the U.S. Supreme Court's opinion in *Honig v. Doe*, the Court's first and, to date, only decision concerned with disciplining students with disabilities. A list of Web sites that will provide additional information on school law in general and a glossary are also included in the resources.