

# Understanding the Laws Related to Students With Disabilities

## LEARNING OBJECTIVES

*After reading this chapter, you should be able to:*

- 10.1** Explain the reasons that laws are so important
- 10.2** Describe the history of special education law
- 10.3** Explain the key provisions of Special Education Law
- 10.4** Describe other laws that affect students with disabilities
- 10.5** Describe the key concepts that have been determined by the U.S. Supreme Court.

*You get justice in  
the next world, in  
this world you have  
the law.*

—William Gaddis

# STANDARDS Addressed in This Chapter:



**Council for Exceptional  
Children Initial Level Special  
Educator Preparation  
Standards as approved by  
the National Council for the  
Accreditation of Teacher  
Education**

## **CEC Initial Preparation Standard 6: Professional Learning and Ethical Practice**

- 6.0—Beginning special education professionals use foundational knowledge of the field and their professional ethical principles and practice standards to inform special education practice, to engage in lifelong learning, and to advance the profession.
- 6.1—Beginning special education professionals use professional ethical principles and professional practice standards to guide their practice.
- 6.2—Beginning special education professionals understand how foundational knowledge and current issues influence professional practice.
- 6.3—Beginning special education professionals understand that diversity is a part of families, cultures, and schools, and that complex human issues can interact with the delivery of special education services.
- 6.4—Beginning special education professionals understand the significance of lifelong learning and participate in professional activities and learning communities.
- 6.5—Beginning special education professionals advance the profession by engaging in activities such as advocacy and mentoring.

**T**eachers may think that it is not important for them to pay attention to laws that govern special education or court cases that clarify the intent of those laws. This is a myth that must be dispelled. Educators are responsible for translating the law, the regulations that implement those laws, and the court case law. Educators must have the background and the knowledge to translate the law into their work with students with disabilities and their families.

Laws and regulations are designed to protect the rights of students; if educators do not understand those rights they cannot protect the students they serve. Imagine the teacher who does not understand the protections of the Family Educational Rights and Privacy Act (FERPA) and gives students' records to someone who should not have those records. That teacher has violated the law and failed to protect the rights of the student. Imagine the teacher who is continuing to have behavioral problems with a student but does not relay that information at the Individual Education Program (IEP) meeting and therefore no functional assessment is conducted and no behavioral intervention plan is written to address the needs of the student. The parent would have the right to a call for a due process hearing because of the teacher's failure to do what was required for the child.

In this chapter we describe the laws that govern education and special education. This chapter (a) provides an historical perspective of federal special education laws, (b) describes important features of special education laws, and (c) describes the implications of several other federal laws that affect children and teachers.

## 10.1 Special Education Laws: Why Are They So Important?

Many families and educators erroneously take for granted that special education services have always been available for students with disabilities. This is not the case. There was a relatively recent time in our history when students with disabilities did not have the right to go to school—when there was no mandate for special education services. Children with disabilities were either ignored or excluded from attending public schools. It was only through the persistence of many dedicated advocates that laws were passed to provide education for children with disabilities. These advocates can be credited for working

with policy-makers to create the mandate for special education.

The important federal laws, regulations, and court cases that pertain to students with disabilities are discussed in this chapter. However, it is also paramount for teachers to know the specific laws and regulations that govern special education in their states. Teachers can find that information through their State Department of Education website and through their professional organizations.

Student Stories 10.1 exemplifies the state of education before the Education for All Handicapped Children Act. Three decades ago, children with disabilities were neglected or ignored and their education was out of the realm of possibility.

Let us now look at the basic laws that protect the rights of students with disabilities and investigate the key concepts associated with those laws.



Paul Doyle/Alamy

Laws and regulations provide protections to students with disabilities.

### Did You Get It?

In describing the steps necessary in getting legislation passed to include students with disabilities in a system that not so long ago shunned and excluded them, your authors use which word(s) to describe the efforts of the advocates who took on this fight?

- a. "Persistent"
- b. "Shocking, militant, and at times violent"
- c. "Stoic"
- d. "Unpretentious and fatalistic"

## STUDENT STORIES 10.1

### Before There Was a Special Education Law

Sally was a 10-year-old student enrolling in school for the first time. Sally had been diagnosed with severe behavioral disorders, significant intellectual development disabilities, and cerebral palsy. She had an unrepaired cleft palate and virtually no speech or language skills. Grunting was her chief form of communication. Every year from the time that Sally was 5 years old, her mother attempted to register her for school. Year after year, the principal said the school could not accommodate a special needs student like Sally.

Until Sally was 10, there was no law that said that she had the right to a free, appropriate public education.

Many formative years for Sally's education were lost—Sally would have had a much better chance for some educational success if she could have been enrolled at school when she was 3 years of age.

### REFLECTIVE QUESTIONS

1. Do you believe that what happened to Sally could happen in today's schools—why or why not?
2. How would Sally have benefited from receiving special education services when she was 3 years old?

## 10.2 History of Special Education Legislation

A series of 5 special education laws were passed over a period of almost 40 years to ensure the education of students with disabilities.

1. The Education for All Handicapped Children Act of 1975 (PL 94-142)
2. Early Childhood Amendments of 1986 (PL 99-457)
3. The Individuals with Disabilities Education Act of 1990 (PL 101-476)
4. The Individuals with Disabilities Education Act of 1997 (PL 105-17)
5. The Individuals With Disabilities Education Improvement Act of 2004 (PL 108-456)

### individualized education program (IEP)

The written plan for the education of an individual student with learning disabilities. The plan must meet requirements specified in the rules and regulations of IDEA.

### related services

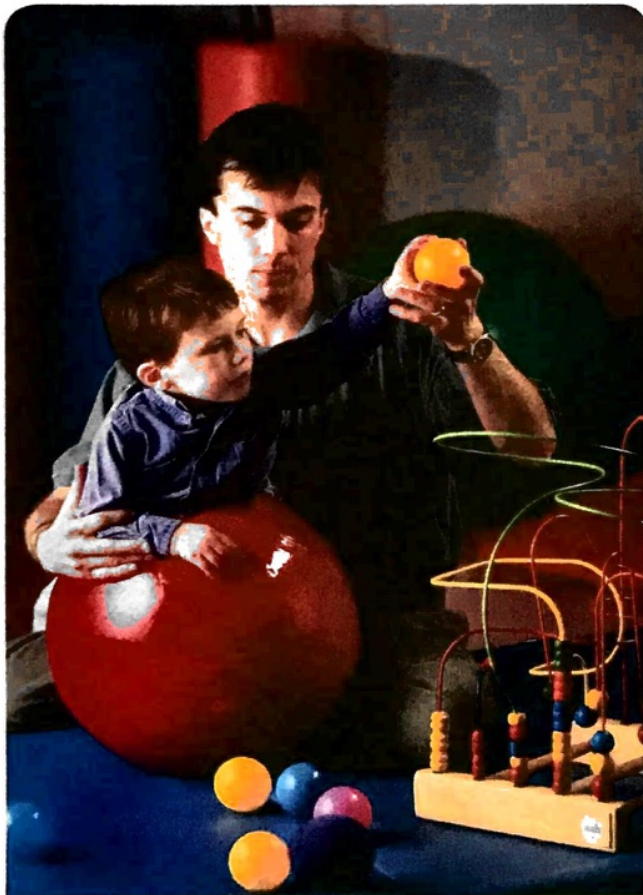
Those services that are designed to supplement the special education program designed to meet the needs of the student.

The first special education law was passed, and it is considered a landmark legislation. The Education for All Handicapped Children's Education Act gave students with disabilities the right to a free appropriate public education (FAPE). Prior to the passage of the first special education law in 1975, children with disabilities were largely ignored or were excluded from attending public school. This law also required that schools develop **individualized education program (IEP)** to plan for the instruction of each child identified with a disability. The IEP became the determinant document for what specific educational programs and **related services** were needed for that child. Placement was to be based on a thorough analysis of the child's levels of performance. From those levels of performance, the goals and objectives were determined for the child. The IEP was done yearly and a thorough reevaluation of the student's ability and achievement is conducted every three years.

Related services are services delivered by specially trained professionals and are needed for the student with disability to benefit from special education. Such services include speech-language services and auditory services, psychological services, physical and occupational therapy, social worker services, counseling services, travel training instruction (or orientation and mobility services), and medical services for diagnostic and evaluation purposes.

### 10.2a Early Childhood Amendments of 1986 (PL 99-457)

In 1986, the Education for All Handicapped Children Act was amended with Early Childhood Amendment (Public Law 99-457). This amendment was significant because it extended the provisions of the law to young children with disabilities, ages 3 through 5 years of age. Whereas PL 94-142 focused on the individual child with a disability, this latest set of amendments also focused on family needs and interventions. Programming for infants and toddlers also became a reality. While not a mandate that schools must provide services to children birth through 2, states must establish an interagency coordinating council to determine how services will be



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Children ages 3 through 5 have the right to a free, appropriate public education. Programming for infants and toddlers is available for many students with disabilities.

provided, and the coordinating council must specify the statewide system that includes definitions for children with disabilities who are eligible, individualized family service plans that are required for young children receiving services, and Child Find that requires that babies who may be eligible for services are sought, and a lead agency in each state must be designated.

### 10.2b The Individuals With Disabilities Education Act of 1990 (PL 101-476)

In 1990, the Education for All Handicapped Children Act was renamed and became the Individuals with Disabilities Education Act (IDEA) (PL 101-476). Two new categories of students with disabilities—autism and traumatic brain injury—were added. This revision also began the era of transition services—to prepare students from school to the world of work and independent living. The 1990 revision also began the provisions of assistive technology devices and services.

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#### transition

The process of moving from one type of program to another. In early childhood programs, it can be from the birth-through-2 program to the ages 3–5 program, or from the ages 3–5 program to another educational placement. For adolescents, transition refers to the passage from school to the adult world.

### 10.2c The Individuals With Disabilities Education Act of 1997 (PL 105-17)

In 1997, there was a major revision to the IDEA, which became known as the Individuals with Disabilities Act of 1997 (IDEA-1997). The purpose of the law was to broaden the 1997 revision. Beyond the purpose of a FAPE emphasizing special education and related services designed to meet the student's individual needs, the 1997 revision added that it also must be designed to prepare students for employment and independent living, including students who have been suspended or expelled from school. New protections were also provided for students with behavioral challenges. Although those protections were maintained in the 1997 revision of the law, they were modified in IDEA-2004.

In IDEA-1997, many new requirements were added to the IEP process in order to more thoroughly address the needs of students with disabilities. The IEP feature called the *present levels of performance* included how the disability affects the child's involvement and progress in the general curriculum. In addition, the IEP team had to consider the participation of students with disabilities in statewide and local assessment and the accommodations that were needed for taking those tests. If a student could not take the statewide and local assessment, the IEP team needed to specify why the assessment was not appropriate and had to determine an alternate method of assessment.

In IDEA-1997, for the first time, the general education teacher was required to be a participant in the IEP process. Teachers' organizations had voiced serious concerns that, with the movement toward inclusion, they were being expected to provide significant services and accommodations for students with disabilities within their classroom yet were not involved in the decision-making process. There was also an addition in the focus of the IEP process. Previously the IEP team addressed the needs of the student alone. With IDEA-1997, language was added to support school personnel. Consequently, if teachers stated, within the IEP process, that they needed additional training to meet the needs of the student, then the training had to be addressed within the IEP process (Johns, 1998).

IDEA-1997 also required that the IEP team consider the strengths of the student and the concerns of the parents for enhancing the education of the child. Additional requirements in the IEP process included addressing special factors, such as: positive behavioral interventions when the student's behavior impeded learning; the language needs of students with limited English proficiency; instruction in Braille and the use of Braille unless the IEP team determined otherwise; communication needs of the student; and the provision of assistive technology devices and services.

### 10.2d The Individuals With Disabilities Education Improvement Act of 2004 (PL 108-456)

In 2004 President George W. Bush signed the most recent version of the law, the Individuals With Disabilities Education Improvement Act of 2004 (IDEA-2004), or Public Act 108-446. The Final Regulations for IDEA-2004 were issued by the U.S. Department of Education in 2006. IDEA-2004, the current revision of the law (as did the original law) assures that all students with disabilities are provided FAPE based on their individual needs. IDEA is based on the premise that there is zero reject (i.e., all students have the right to go to school regardless of the severity of their disability).

Remember also that in IDEA-97 and continuing in IDEA-2004, a FAPE is provided to all students—even those students who are suspended or expelled from school. Students who are suspended from school for any more than 10 days per year must have access and reach progress in the general curriculum and their IEP services. Also they should receive a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur (IDEA-2004, Section 615, 34 C.F.R. 300.530–300.536).

#### zero reject

No student can be rejected from attending school because of his or her disability. All students, regardless of the severity of their disability, have the right to go to school.

#### Did You Get It?

The key right granted to students with disabilities as a result of The Education for All Handicapped Children's Education Act is "FAPE," otherwise known as Free \_\_\_\_\_ Public Education.

- a. Accessible
- b. Applicable
- c. Acceptable
- d. Appropriate

## 10.3 Key Provisions of Special Education Law

### 10.3a Individualized Education Program (IEP)

IEP is a mandate of the IDEA. The IEP is a written statement for a child with a disability. A student's IEP is developed, reviewed, and revised in accordance with the law (IDEA-2004). Educational services and settings for students with disabilities are based on the individual needs of the student as determined by the IEP team. The IEP is the hallmark of good planning for students and has been in existence since the inception of the special education mandate in 1975.

The IEP is developed at least yearly and addresses the educational implications of the evaluations. The IEP includes the child's levels of academic achievement, the child's functional performance, the annual goals for the child, and the placement and services where those goals can be met and where the student can receive meaningful benefit. IDEA-2004 allows 15 states to apply for waivers to do students' IEPs, with parental consent, every three years at key transition points for the student. Figure 10.1 shows the first page of a sample IEP.

**Special Considerations in the IEP** Figure 10.2 lists a number of special factors that must also be considered within the IEP process.

**IEP Planning Team** *There is no such thing as unilateral action in special education.* This is a theme that should govern actions of school personnel in special education. This concept, however, is very difficult for school personnel to understand because school officials in general education are able to make unilateral decisions about general education students. In special education, however, it is the IEP team that determines the needs of the student and the placement of that student. In the evaluation process, there must be a multidisciplinary

#### SAMPLE IEP

Please note that this sample includes some of the components for a particular child. It does not constitute all of the components that might be required in individual states. States have developed their own recommended IEP forms and readers should visit the websites of their state departments of education to review the specific forms and the requirements based on that state. This is just to give you an example of some of the material that will be required in an IEP. This is a fictitious student.

#### IEP for Betty Lou Holden

Date of Conference: May 15, 2012

Date of Recent Evaluation: May 21, 2011

Date of Next Reevaluation: May 21, 2014

Purpose of Conference: IEP Review/Revision

#### Student Identification Information:

Name: Betty Lou Holden Date of Birth: November 6, 2002 ID number: 55015

Student Address: 106 East Maple Court, Clarksville, Indiana 47130

Female

Ethnicity: Caucasian

Language/Mode of Communication Used by Student: English

Current Grade: fourth grade

Disability: Learning Disability—Auditory Memory Deficits and Fine-Motor Deficits

Resident District: Clark County Schools

Serving District: same

Resident School: Gurnsee School

#### Parent/Guardian Information:

Parents' name: James and Martha Holden

Parents' address: 106 East Maple Court, Clarksville, Indiana 47130

Parents' telephone number: 812-546-6789

Language/Mode of Communication Used by Parents: English

FIGURE 10.1  
Sample IEP

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Download the complete IEP from CourseMate.

**FIGURE 10.2**  
Special Considerations in  
the IEP



### Special Considerations in the IEP

- *Positive behavioral interventions and supports.* In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports.
- *English-Language Learners (ELL).* In the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP.
- *Visual Impairment.* In the case of a student with visual impairment, provide for instruction in Braille and the use of Braille unless the IEP team determines it is not needed.
- *Hearing Impairment.* In the case of a student with specific communication needs, consider those needs.
- *Assistive Technology.* In the case of a child who may need assistive technology, consider those needs.

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evaluation that is conducted by a group of individuals. No one individual within the educational system determines that the student has a disability which adversely impacts educational performance. Instead, a group of individuals must conduct a variety of assessments and then as a team with the parent determine the disability of the student, whether that disability results in an adverse effect on educational performance, and what the needs of the student are. For example, if the student has speech/language problems, it is critical that an individual who has expertise and certification or licensure in speech/language be part of the evaluation team.

Figure 10.3 shows the IEP team members as specified within IDEA-2004.

**FIGURE 10.3**  
The IEP Team Members

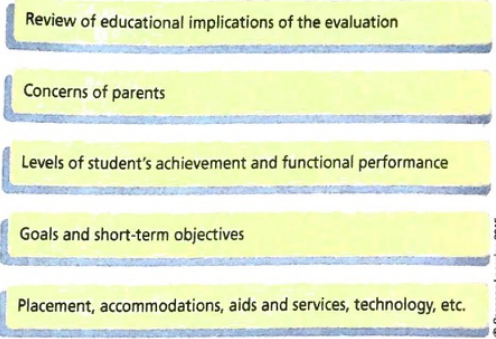
### The IEP Team Members

- *A parent.* The parent of a child with a disability;
- *An education teacher.* Not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- *A special education teacher.* Not less than one special education teacher, or where appropriate, not less than one special education provider of such child;
- *A person who is knowledgeable about special education and the general education curriculum.* A representative of the local educational agency who is qualified to provide, or supervise the provision of, *specially designed instruction* to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the local educational agency;
- *A person who can interpret the evaluation.* An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in the other sections;
- *Other individuals.* At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever appropriate, the child with a disability (IDEA Section 614, 34 C.F.R. 300.321).

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Thus, the IEP team is charged with examining the needs of the student, planning goals, and then determining how and where those goals can be met. It is critical for the IEP team to consider the whole range of student needs:

- Students who have a disability that results in an adverse effect on educational performance require specialized instruction to meet those needs.
- They also require sufficient accommodations in assessment and instruction.
- They may require specific modifications to the general curriculum.
- They may also require related services coordinated with their special education program and placement.



**FIGURE 10.4**  
What the IEP Team Should Consider

The IEP team is charged with examining the needs of the student, planning goals, and then determining how and where those goals can be met. Figure 10.4 represents a flow chart of how the IEP team should proceed in determining the individualized needs of the child.

After the IEP meeting is over, the team members' responsibilities continue every day. The IEP team members are responsible for implementing the IEP and monitoring whether the student is making progress. Progress reports must be provided to the family in accordance with the school district's reporting system. When the student is not making progress it is up to the team members to call a new IEP team meeting to determine what needs to be changed.

## STUDENT STORIES 10.2

### Teacher's Role in an IEP

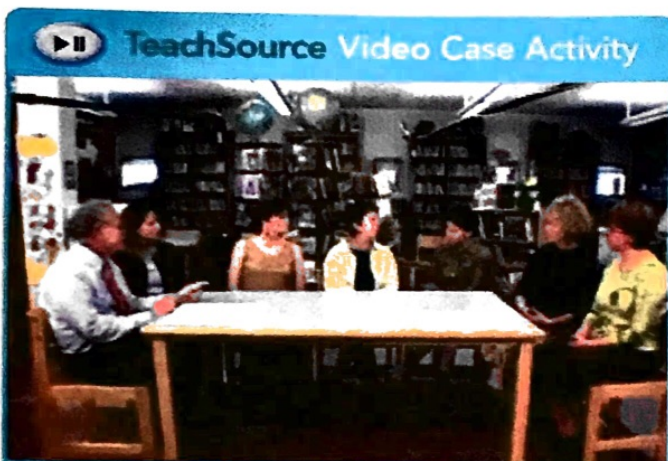
Mrs. Johns, the special education teacher, has been working with Jonathan, a fifth-grade student with significant learning disabilities, and he has made good progress. His reading comprehension has increased from a 1.3 grade level to a 2.6 grade level, as measured on an individualized achievement test. Each day Jonathan receives 90 minutes of specialized instruction—one-on-one with Mrs. Johns and peer-to-peer collaboration.

Jonathan's IEP includes his progress based on Mrs. Johns's observations and curriculum-based assessment. Going into the IEP meeting, Mrs. Johns believes Jonathan should continue to receive the same amount of instructional time in the learning disabilities resource class. When the administrator talks about placement recommendations, he announces that the school district is going to cut back on services and wants to provide more time for the special education students in the regular classroom. He explains that rather than receive pullout special services, those services will be provided in the general education classroom. Jonathan's parents

are upset because they want him to receive the same amount of services as in the past. The general education classroom teacher, Ms. Lee, also agrees with the parents; however she is afraid to speak up and voice her opinion because she does not yet have tenure. She knows that she should have a voice in the decision-making process. She also knows that the decision should be based on the individual needs of Jonathan and not the convenience of the school district. However Ms. Lee is torn between the needs of the student and the opinion of the school administrator.

### REFLECTIVE QUESTIONS

1. What could Mrs. Johns have done to prevent this dilemma from occurring?
2. What is Mrs. Johns's obligation as an active participant in this IEP?
3. What is the responsibility of Ms. Lee as an active IEP participant?



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Watch the TeachSource Video Case entitled "Foundations: Aligning Instruction With Federal Legislation." In this video a teacher, a specialist, an intern, and the principal discuss the federal laws of the Individuals With Disabilities Education Act (IDEA) and No Child Left Behind Act (NCLB), and the implementation of these laws and the implications of the law for special educators:

#### QUESTIONS

1. What will you do when you begin teaching to ensure that you are following the laws that govern children with disabilities?
2. What will you do when you disagree with another IEP team member about what the least restrictive environment should be for the student?
3. What role do you believe that state testing should play in evaluating students with disabilities and in evaluating the teacher's performance?

## 10.3b Nondiscriminatory Evaluation Procedures

Each school district is responsible for assuring that no one single measure or assessment is utilized as the sole criterion for determining whether a child has a disability. Further, the school district must assure that, within the evaluation process, only technically sound instruments are utilized. Criteria established in IDEA-2004 require that school districts ensure that:

- Assessments and other evaluation materials are selected and administered so as not to be discriminatory on a racial or cultural basis.
- Assessments are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so.
- Assessments are used for purposes for which the assessments or measures are valid and reliable.
- Assessments are administered by trained and knowledgeable personnel.
- Assessments are administered in accordance with any instructions provided by the producer of such assessments.
- Assessments are provided to the child in all areas of suspected disability (Individuals With Disabilities Education Improvement Act 2004, Section 614).

Assessments and other evaluations are to be tailored to assess specific areas of educational need and are not merely those that are designed to provide a single general intelligence quotient (34 C.F.R. 300.304). Assessments are also to be

selected and administered, so as to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure) (IDEA Regulations Section 300.304).

We know that students and their needs change, and therefore IDEA-2004 requires an evaluation at least every three years or more often as determined by the parent and school district personnel. Parental consent must be given for the evaluation. A team meeting is held after the evaluation occurs to review the results of the evaluation with the parent. No one person is responsible for all components of the evaluation; rather, it is a multidisciplinary process.

## by Evaluation

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### 10.3c Least Restrictive Environment

The least restrictive environment (LRE) provisions of the IDEA provide that, to the maximum extent appropriate, students with disabilities are educated with their peers without disabilities. The premise of the LRE is that placement decisions about the student's educational setting should be based on each student's individual needs.

IEP teams must consider the student's level of academic achievement and functional performance and then develop goals to address the individual needs of the student. Based on that information, the IEP team must determine where those goals can be met—in what specific educational setting is the student likely to gain *meaningful benefit*?

Some educators interpret the LRE feature of the law to mean that students should always be educated within the general education classroom. Some individuals and organizations go further, advocating the philosophy of full inclusion.

Actually the word *inclusion* does not appear anywhere in the law. The concept of *full inclusion* is a philosophy that goes further, proposing that all children, regardless of the severity of their disability, are to be educated within the general education classroom. Criteria for determining the LRE were established in the Rachel Holland case. Rachel Holland was a child with intellectual disabilities and went to school in the Sacramento Unified School District. Rachel's parents wanted her to be educated within the regular classroom setting but the school district believed that it was more appropriate to educate her in a special education classroom. The school district lost the case. The criteria established were as follows:

1. Will the student derive educational benefit from the placement considered?
2. Will the student derive noneducational benefit from the placement? The examples used within the case were friendships, improved self-confidence, and excitement for learning.
3. Will there be detriment because the student is disruptive, distracting or unruly, and would the student take up so much of the teacher's time that the other students would suffer from lack of attention?
4. What is the cost of the proposed placement? Will the placement burden the school district's funds or adversely impact services available to other children?

*Sacramento City Unified School District Board of Education v. Rachel H.*, 20 IDELR 182 (9th Cir., 1994).

Later the year that *Holland* was decided, the same circuit ruled differently with another student while applying this 4-prong test. (*Clyde K. and Sheila K. individually and as guardians for Ryan K. v. Puyallup School District*, 21 IDELR 664, September 13, 1994). Ryan K. was a 15-year-old with Tourette's Syndrome and ADHD who had also engaged in incidents of sexual harassment. Because of escalations in his behavior,

#### least restrictive environment (LRE)

To the maximum extent appropriate, students are educated with their nondisabled peers.

## TEACHING TIPS 10.1

### Preparing for an IEP

- As an IEP participant, you are part of a decision-making process that will impact a student's life. Take that responsibility very seriously.
- Be well prepared by reviewing the student's previous IEP and evaluations.
- Be prepared to talk about the student's strengths and interests.
- Be prepared to share factual information about your work with the student.
- Remain objective in the information that you provide. During the discussion of the present levels of academic achievement and functional performance, reveal information that is based on assessment information and your observations.
- Suggest goals that are measurable, observable, and objective.
- Engage the parent actively in the discussion by asking specific questions about what the student does well at home.
- Participate actively in the decision-making process. Use data to justify your recommendations.

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including an assault on a staff member, the district recommended that Ryan be placed in STARS—Students Temporarily Away from Regular School. That program provided a more structured environment and provided more individualized attention. Parents originally agreed but then changed their minds and filed a lawsuit alleging violation of his rights to due process. The parents believed that Ryan could be educated in a mainstream setting if the school provided a personal aide for him.

The court determined that the STARS program was the least restrictive environment for Ryan, applying the *Holland* test as follows:

- a. Ryan's disruptive behavior kept him from learning.
- b. He derived at best only minimal nonacademic benefits from his previous general education placement.
- c. The record indicated that his presence in classes in the regular school building had an "overwhelmingly negative effect on teachers and other students."
- d. He was dangerously aggressive. Schools have a special obligation to ensure that students in their care are kept out of harm's way.
- e. Ryan's sexual harassment was also problematic. Public officials have a compelling duty not to tolerate it in classrooms and hallways. School officials should be concerned about liability for failing to remedy peer sexual harassment that exposes students to a hostile educational environment.

The court said that disruptive behavior that significantly impairs the education of other students strongly suggests that a mainstream placement is not appropriate. School officials have a duty to ensure that students with disabilities receive an appropriate education but they are "not required to sit on their hands when a disabled student's behavioral problems prevent both him and those around him from learning."

### 10.3d Procedural Safeguards

A cornerstone of IDEA is the right of the parent or the school district to disagree with decisions that might be made by the IEP planning team. School districts and parents all want the same thing for children, but sometimes they may not agree on how to achieve these goals. There are safeguards to protect the rights of the students. School personnel and parents are always encouraged to resolve their differences through informal measures. Under IDEA-2004 *mediation* is provided. Mediation is more informal and less legalistic procedure than going to a due process hearing and requires an impartial individual, who is not an employee of the school district, to listen to both sides of the issue and render a decision. Mediation is provided at no cost to the parents. In addition, IDEA-2004 designates a requirement that prior to a due process hearing, the school district will convene a meeting with the parents and the relevant member or members of the IEP team to resolve differences. If informal procedures and mediation still fail to resolve the issue, then the due process system is provided and specific procedures are outlined for it in IDEA-2004 and its accompanying regulations (34 C.F.R. 300.500–300.518). States then determine the specific procedure for who is a hearing officer and how the due process hearings are conducted. Figure 10.5 summarizes the list of procedures from least to most formal.

When there is a dispute between the parent and the school district—:

1. Parents and school district meet with each other to attempt to resolve differences. If that is unsuccessful,
2. Parent can file a complaint with the appropriate State Department of Education. If that is unsuccessful,
3. Parent can request mediation where a neutral third party is appointed by the State Department of Education to listen to both sides of the story and render a decision. If that is unsuccessful,
4. Parent can request a due process hearing and prior to that hearing, the school district must convene a meeting with the parents and the relevant member or members of the IEP. If the district has not resolved the complaint to the satisfaction of the parent, the due process hearing occurs.

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## FIGURE 10.5

Steps to Take When There Is a Dispute Between Parents and the School Districts

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### 10.3e Contentious Issues Surrounding IDEA

However, IDEA-2004 is very contentious on several issues.

- *Rights of Parents.* For the first time in a reauthorization, the rights of parents and students were reduced, particularly in the areas of transition, due process rights, and discipline issues (Johns, 2005).
- *Transition.* Transition planning had previously been required at the age of 14, but in IDEA-2004, it is not required until the age of 16.
- *Attorney's fees.* Within due process rights, if a parent files a hearing that could be construed as frivolous, the parent's attorney or the parent will be required to not only pay their own attorney's fees but also the fees of the school district.
- *Discipline.* In the area of discipline, if the behavior is not a manifestation of the disability, the school district may move the child to the recommended disciplinary setting regardless of whether the parent agrees. The parents' recourse is to file for a due process hearing, but in the meantime, the student's placement is the recommended disciplinary setting.
- *Response-to-Intervention.* Another change was in the evaluation procedures for students with learning disabilities. IDEA-2004 provides that a local school district may use a *response-to-intervention* model in determining whether a student has a learning disability. The Regulations for IDEA-2004 (34 C.F.R. 300.307) permits the process of response-to-intervention, but it does not require its use. The district may choose not to use a discrepancy between ability and achievement model for identification purposes. Many families of children with learning disabilities, as well as educators, fear that the lack of a research base for response-to-intervention may result in delays in case study evaluations for those students who need such evaluations. Response-to-Intervention is discussed earlier in this book.

### 10-3f Specific Legal Protections for Students With ADHD

- **Special education services.** Children with ADHD may be eligible for special education services under the category of "other health impaired" in IDEA-2004. The law describes other health impaired, when applied to

children with ADHD, as heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

A child with ADHD may also be eligible for special education services under other existing categories of special education, in addition to other health impaired, such as the categories of learning disabilities or emotional disturbance.

- **Section 504 services.** A child with ADHD may be eligible for services under the legislation of Section 504 of the Rehabilitation Act of 1973, even if that child is not eligible for special education services. Section 504 mandates that any agency receiving federal funds must provide reasonable accommodations for people with disabilities.

According to Section 504, if the child is found to have a physical or mental impairment that substantially limits a major life activity, such as learning, the school must make an individualized determination of the child's educational needs, and reasonable accommodations must be provided within the general education classroom (Section 504 of the Rehabilitation Act). Students who are eligible for Section 504 have a disability but the disability does not adversely impact educational performance. As an example, a student with ADHD would be eligible for a Section 504 plan if there is no adverse effect on educational performance; if there is an adverse effect, however, then the student would have an IEP. Students who have IEPs have a disability that impacts educational performance.

### Did You Get It?

IDEA-2004 placed the onus on which of the following in ensuring that neither assessments nor any other form of evaluation contained any aspects at all which could be considered discriminatory in nature?

- a. Local school districts
- b. State governments
- c. The federal government
- d. Both states and the federal government

## 10.4 Other Laws Impacting Students With Disabilities

### 10.4a No Child Left Behind Act of 2001

Educators must not only focus on the laws that govern the rights of students with disabilities, they must also be cognizant of how laws governing all students impact on students with disabilities. The most important law governing all students is No Child Left Behind (NCLB) Act of 2001, the latest reauthorization of the Elementary and Secondary Education Act. NCLB resulted in massive changes to the entire field of education, including special education. School personnel struggle to meet the requirements of NCLB, which looks at all students and at what level they achieve as compared to their grade level peers, while at the same time it also addresses the individual needs of the

student as the cornerstone of the IDEA-2004. NCLB focuses on these major requirements: highly qualified personnel and accountability for results for all students,

**Highly Qualified Personnel** What are the implications of NCLB for special education teachers? NCLB requires that all teachers be highly qualified to teach the students within their classroom. This law requires that special education teachers not only have certification in special education, but also are highly qualified in the core academic subjects if they are the sole provider of that instruction. If the teacher is providing consultation/collaboration to the classroom teacher regarding appropriate accommodations to the classroom curriculum, the teacher must possess certification in special education. If the special education teacher provides the instruction for students who take alternate assessment with alternate achievement standards, then the teacher must be qualified as an elementary-school teacher. Each state must establish certification standards for teachers and, therefore, must establish a mechanism to assure that all teachers are highly qualified for their positions. If a student in a Title I school is being taught for more than 4 weeks by a teacher who is not considered highly qualified, then the school district must notify the parents of the student that the student has a teacher who does not meet the standard.

The provisions for highly qualified teachers do not apply to teachers hired by or working in private elementary schools and private secondary schools (34 C.F.R. 300.18).

**Accountability for Results for All Students** Special educators have long been responsible for assuring that students with disabilities gain meaningful benefits as a result of their special education and related services. Since NCLB, accountability is the expectation for all students. All students must make adequate yearly progress (AYP) in reading, math, and science. Scores are disaggregated or separated for specific groups of students—students with disabilities may be a disaggregated group of students depending upon the number of students that the state has determined as the minimum size of a disaggregated group. Data is disaggregated for students by poverty levels, race ethnicities, disabilities, and English-Language Learners (*Office of the Undersecretary of Education, 2002*). The data is reported according to each of these groups separately.

Students must take a state-determined assessment and then each State Department of Education compiles the results of the tests. With the latest adoption of the Common Core Standards in the majority of states, schools are revising their tests to measure the common core.

Each state must report the information back to the school district, while also reporting the school and district results to the public via newspaper and the Internet. For students with disabilities, the IEP team determines whether the student takes the state assessment with or without *accommodations*. If the student takes the test with accommodations, the IEP team determines the specific accommodations that should mirror the accommodations made within instruction. No more than 1% of students with the most significant cognitive disabilities may take an alternate assessment based on alternate achievement standards.

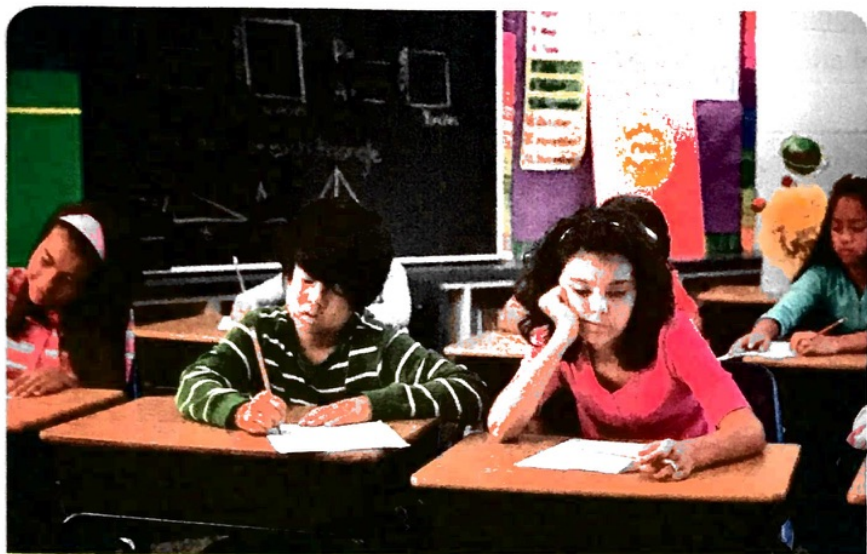
The U.S. Department of Education is also allowing an additional 2% of students with disabilities to take a modified assessment based on modified achievement standards. The 2% subgroup (about 20% of students with disabilities)



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**adequate yearly progress (AYP)**

Progress of schools that is determined by the state in accordance with No Child Left Behind Act requirements and that must result in continuous and substantial academic improvement for all students. The term that refers to the results of statewide tests and how those results meet the threshold of the state's requirement for a specific score.



Students participating in assessment.

Ariel Skelley/Blend Images/Getty Images

would be in addition to the separate 1% group of students (about 10% of students with disabilities), with the most significant intellectual disabilities who are permitted to take alternate assessments aligned to alternate achievement standards. Therefore, about 30% of students with disabilities could take either the alternate assessment based on alternate achievement standards or a modified assessment based on modified achievement standards.

The final regulations that govern how states can measure the students in the 2% group (34 C.F.R. Parts 200 and 300) are as follows:

- States may develop modified achievement standards and give assessments to qualified students based on those standards.
- States must develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which a student is enrolled.
- Standards must continue to hold students to high expectations; modified standards must be aligned with grade level curriculum.
- Students assessed under modified achievement standards must receive grade level instruction in the relevant subjects.
- Students who are eligible to be assessed based on alternate or modified academic achievement standards may be from any of the disability categories listed in IDEA.
- Out-of-level testing is not permitted: a student who is in fifth grade, for example, cannot take the test at the third-grade level.
- If the student's IEP includes goals for a subject that is assessed at the grade level in which the student is enrolled, the goals must be based on the academic-content standards for the grade in which the student is enrolled.
- Modified achievement standards may not preclude a student from earning a regular high school diploma (34 C.F.R. Parts 200 and 300).

NCLB also holds schools accountable to ensure that students attend schools that are safe. Each state shall establish and implement a policy that a student attending a persistently dangerous school or who becomes a victim of a violent criminal offense is allowed to attend a safe school.

#### 10.4b Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 prohibits *discrimination* on the basis of a disability. Section 504 also provides reasonable accommodations to students with disabilities and those accommodations are to be determined

within the scope of a Section 504 accommodation plan for the student who has a disability but may not be eligible for special education.

The ADA Amendments Act of 2008 amended the definition of a disability. The term disability means a physical or mental impairment that substantially limits one or more major life activities of the individual. Major life activities include but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. An individual meets the requirements of having an impairment if the individual establishes that he or she has a disability even if the disability can be corrected. The exception is for a person who has a vision problem that can be corrected with eye glasses (ADA Amendments Act of 2008).

Under Section 504, an appropriate education means an education comparable to the education of other students without disabilities, unlike IDEA that defines an appropriate education as one that meets the individualized needs of the student. A student with a disability may be eligible for the provisions of Section 504, yet not eligible for services under the IDEA. In order for a student to be eligible for services under IDEA, the student must exhibit a disability that results in an adverse effect on educational performance. First, the evaluation team determines whether there is a disability. If there is a disability determination, then the team determines whether there is an adverse effect on educational performance. If there is not an adverse effect, then the student may need accommodations for his or her disability and will need an accommodation plan under Section 504 of the Rehabilitation Act of 1973. If there were an adverse effect, then the student would need an IEP.

Section 504 provides that the student have the same access as other students such as physical accessibility to the building and accommodations in instruction and assessment so the student has access to the same curriculum and instruction. IDEA provides that the student's education be individualized to meet his or her special needs.

#### 10.4c **The Americans With Disabilities Amendments Act (ADAA)**

School personnel must also be aware of the laws that govern the rights of any individual who comes in to the school setting. Physical and program accessibility must be available to all individuals who need access to the school. The Americans With Disabilities Act (ADA) of 1990 broadened the scope of services to individuals with disabilities throughout their lifetime and in multiple settings. This legislation prohibits employers from discriminating against a person with a disability who is able to perform the essential functions of the job. Employers must make reasonable accommodations for employees with disabilities unless it would create an undue hardship. The law applies to businesses that employ 15 or more workers. The law also requires that public transportation must be accessible and local areas must provide alternative transportation if persons with disabilities are unable to use the fixed route service. New buildings must be accessible. Telephone companies must also have relay assistance to telephones for those who are hard of hearing or have speech impediments (Wood, 1992).

## 10.4d Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) is a critical law that protects students' records. It is important that all educators understand how the records of each of their students are handled and with whom records can be shared. This law is also known as the *Buckley Amendment* and it applies to all educational agencies that receive funds administered by the U.S. Secretary of Education. Educational records are those that are specific to the student and are maintained by an educational agency. They may include handwritten or print materials, computer media, video or audiotape, film, microfilm and microfiche, and e-mail. Exceptions to those records include records that are maintained by educational personnel that are not revealed to anyone else—these records are known as *sole possession records*. Examples of sole possession include records created and kept by a law enforcement unit, employment records, medical records, and alumni records (Allen, 2003).

FERPA requires that school personnel must obtain written permission from a parent/guardian prior to disclosing the records to a third party outside of a public school. There are exceptions to the rule. Specifically, schools can disclose information:

- To appropriate authorities in the event of an emergency to protect the health and safety of a student.
- To comply with a lawfully issued subpoena or court order.
- To comply with requests of local law enforcement information that is based on an official's personal knowledge or observation.
- To comply with an audit or evaluation of federal or state supported education programs.

### Did You Get It?

In terms of accountability, states are required by No Child Left Behind Act to report the results of statewide assessments to both the school district in question and the

- a. federal government
- b. Attorney General
- c. U.S. Senate
- d. public-at-large

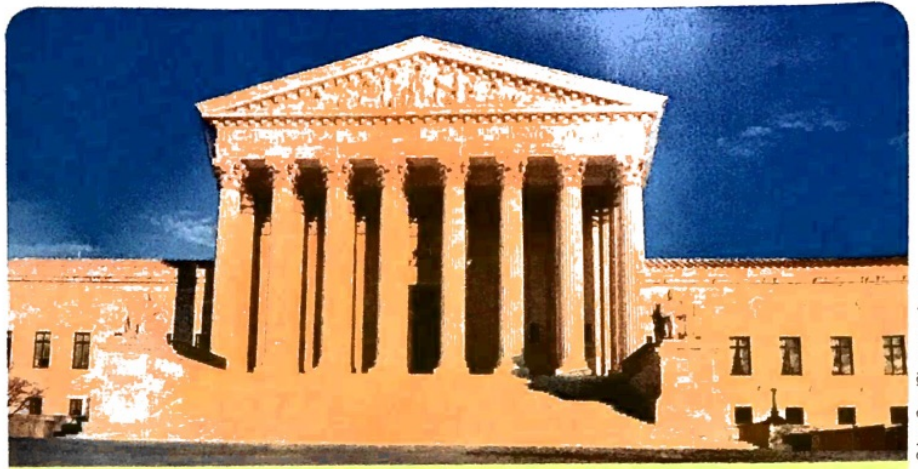
Teachers will generate information for a student's record—most of it will be considered a temporary record but some part may be a student's permanent record. Temporary records are records that are only kept until the student is out of school for a designated period of time (usually five years). Permanent records are maintained within the district for many years. Special education records are considered temporary records (Johns & Crowley, 2003).

## 10.5 The Court System: Case Law

When laws and regulations are ambiguous on specific issues (and this is the case in a number of areas), the courts become involved. You have learned earlier that both parents and school district personnel may go to due process on specific issues. When a decision is rendered, one party will have been deemed to have "won" the case. The other party will be dissatisfied and will have to decide whether they wish to appeal the case to a higher level. Ultimately, a case may move through the system and a very few will go as far as the U.S. Supreme Court. Relatively speaking, few cases pertaining to special education have been heard by the Supreme Court. Those cases however have become the law of the land. Table 10.1 lists key cases in education that have been decided by the Supreme Court.

It is important that educators be lifelong learners. This is especially true in the arena of special education laws and regulations. These laws and regulations and court interpretations of these laws are changing continually.

Educators must work to have their voice heard in the development of such laws and regulations and should grab every opportunity possible to provide input. Internet access makes it easier for educators to provide input into the development of future policies. It is also critical for educators to be active in their professional organizations, so that they can stay abreast of the latest policy issues. Policy issues drive what happens to students and to the educators providing services to the students—educators must be active in those policy issues.



The Supreme Court building.

Orhan Cam/Shutterstock.com

## TABLE 10.1

### Key Cases in Education Decided by the Supreme Court

#### *Brown v. Board of Education of Topeka* (1954)

The U.S. Supreme Court rules that school segregation based on race was prohibited by Fourteenth Amendment of the U.S. Constitution. Such case law raised the question that if schools could not discriminate based on race, then they should not be able to discriminate based on disability. Oliver Brown and a group of other parents took their children to schools in their neighborhood in Topeka, Kansas, and were denied entrance and told that their children had to attend schools that were designated for African American students. As a result the local chapter of the NAACP filed the suit on behalf of these families.

*Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

#### *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982)

Amy Rowley was a deaf student who needed an interpreter. The U.S. Supreme Court determined that her school district was not required to provide a sign language interpreter. The Court ruled that schools must offer personalized instruction with sufficient support services to permit the child with a disability to benefit educationally from that instruction. They do not have to ensure that the student reaches his or her full potential. Since that ruling, the law has changed to require interpreters for students who need them.

*Bd. Ed. Hendrick Hudson Sch. Dist. v. Amy Rowley* (458 U.S. 176)

#### *Irving Independent School District v. Tatro* (1984)

The student had spina bifida and required intermittent catheterization. The Supreme Court ruled that a Texas school district must provide sterile, intermittent catheterization as a related service.

*Irving Indep. Sch. Dist. v. Amber Tatro*, 468 U.S. 883 (1984)

#### *School Committee of the Town of Burlington v. Department of Education of the Commonwealth of Massachusetts* (1985)

The student from Massachusetts was placed in a private school without the approval of public school officials. The Supreme Court decided that the parents of the student should be reimbursed for tuition even though they took their son out of a public school and placed him in a private school without the approval of public school officials. The Supreme Court also stated that the parents can be reimbursed in such situations if hearing officers or judges subsequently rule that the move was in the child's best interest. The Supreme Court did warn that parents are not entitled to such payments if hearing officers or judges rule that the student's public school placement was "appropriate" under the law.

*Burlington Sch. Comm. v. Mass. Dept Ed.*, 471 U.S. 359 (1985)

#### *Honig v. Doe* (1988)

The Supreme Court ruled that when students pose an immediate threat to the safety of others, officials might temporarily suspend the student for only up to 10 school days. Schools cannot permanently and unilaterally exclude disabled children by means of indefinite suspensions and expulsions.

*Honig v. Doe* (484 U.S. 305)

(Continued)

**TABLE 10.1****Key Cases in Education Decided by the Supreme Court (Continued)*****Bowen v. Massachusetts* (1988)**

The Supreme Court ruled that services provided under a student's individualized education program could not be excluded from Medicaid reimbursement just because the services were characterized as partly "educational" (Illinois Alliance for Exceptional Children and Adults, 1990). *Bowen v. Massachusetts*, 487 U.S. 879 (1988)

*Bowen v. Massachusetts*, 487 U.S. 879 (1988)

***Zobrest v. Catalina Foothills School District* (1993)**

The Supreme Court ruled that the provision of a publicly paid sign language interpreter for a deaf student on the grounds of the student's parochial school did not violate the Establishment Clause of the First Amendment to the Constitution (Maloney and Pitasky, 1995).

*Zobrest v. Catalina Foothills School Dist.*, 509 US 1 - Supreme Court 1993

***Cedar Rapids v. Garret F.* (1999)**

Garret Fry was a teenaged quadriplegic who required intensive medical services within the school. The district believed it was not responsible for such complex services under the definition of IDEA's related services. The Supreme Court ruled that the school district is responsible for services other than what would need to be performed by a physician. This is known as the "bright line" rule (Lake and Pitasky, 2000).

*Cedar Rapids Community School Dist. v. Garret F.*, 526 US 66 - Supreme Court 1999

***Brian Schaffer v. Jerry Weast, Superintendent of Montgomery County Schools 04-698* (2005)**

The Supreme Court ruled that parents who want better special education programs for their children and challenge the school district would have the burden of proof, if the state does not specify who has the burden of proof. The case involved a Maryland family that challenged the school district's special education program designed for their son with ADHD.

*Schaffer v. Weast*, 546 US 49 - Supreme Court 2005

***Arlington Central School District v. Murphy 05-18* (2006)**

The Supreme Court ruled 6-3 that the IDEA does not authorize the courts to reimburse parents for the fees of experts (including consultants) when parents prevail in a hearing.

*Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006)

***Winkelman by Winkelman v. Parma City School District 5-983* (2007)**

The Supreme Court ruled that a parent of a child with a disability could pursue a case involving IDEA in federal court without hiring an attorney.

*Jacob Winkelman v. Parma City School District* (No. 05-983)

***Forest Grove School District v. T.A. 08-305* (2009)**

The Supreme Court ruled that parents in a special education dispute with a school district may be reimbursed for "unilaterally" placing their child in a private school when the child has never received special education services from the district.

*Forest Grove School District v. T. A.*, 129 S.Ct. 2484 (2009)

### 10.5a Application of the Law: You Be the Judge

You have read throughout this chapter about the students and their guardians' legal rights. You may be wondering whether you as a teacher have any rights when you advocate for the rights of the child. How would you rule in this case shown in Figure 10.6?

In *Sturm v. Rocky Hill Board of Education*, 43 IDELR 36 (D. Conn. 2005), the U.S. District Court in Connecticut ruled that the teacher had standing to assert a claim because Section 504 does extend its protections to those who advocate on behalf of those individuals with disabilities. The court ruled that individuals with disabilities might need assistance in vindicating their rights from those

# TEACHING TIPS 10.2

## Ways to Keep Up With Current Laws

- Become active in your special education professional organization, such as the Council for Exceptional Children or the Learning Disabilities Association of America.
- Attend local and statewide workshops on legal issues impacting special education.
- Download your own copy of the federal and state special education laws and keep those in a binder for your reference.
- Familiarize yourself with your state's Department of Education's website.
- Become familiar with this compilation of websites related to Special Education:

Council for Exceptional Children [www.cec.sped.org](http://www.cec.sped.org)

Learning Disabilities Association of America  
[www.lidaamerica.org](http://www.lidaamerica.org)

Department of Education [www.ed.gov/nclb/landing.html](http://www.ed.gov/nclb/landing.html)

Wrights Law [www.wrightslaw.com](http://www.wrightslaw.com)

LD Online [www.ldonline.org](http://www.ldonline.org)

Council for Exceptional Children [www.cec.sped.org](http://www.cec.sped.org)

U.S. Department of Education [www.ed.gov](http://www.ed.gov)

Our Children Left Behind [www.ourchildrenleftbehind.com](http://www.ourchildrenleftbehind.com)

Autism Society of America [www.autism-society.org](http://www.autism-society.org)

The ARC [www.thearc.org](http://www.thearc.org)

National Association of Special Education Teachers  
[www.naset.org](http://www.naset.org)

National Information Center for Children and Youth  
with Disabilities [www.nichcy.org](http://www.nichcy.org)

Disability Rights Education and Defense Fund  
[www.dredf.org](http://www.dredf.org)

Council of Parent Attorneys and Advocates  
[www.copaa.org](http://www.copaa.org)

National Down Syndrome Society [www.ndss.org](http://www.ndss.org)

National Association of Protection and Advocacy  
Systems [www.napas.org](http://www.napas.org)

TASH [www.TASH.org](http://www.TASH.org)

Americans With Disabilities Act [www.ada.gov](http://www.ada.gov)

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individuals who have their own claim to relief under Section 504 of the Rehabilitation Act (Norlin, 2006). Therefore, the court ruling was B.

It is important that teachers advocate for the needs of their students. To do so, teachers should follow the appropriate chain of command within the school system. When a teacher is concerned that a student may not be getting what he or she needs, the teacher should go to his or her immediate supervisor and talk with that individual. It is important that the teacher go to the supervisor with factual information about the student's progress or lack of progress. It is always important for the teacher to collect data about how the student is doing.

#### A Court Case: *Sturm v. Rocky Hill Board of Education*

A teacher advocated on behalf of the students with disabilities in the district's special education programs. Because of her advocacy on behalf of the children, she suffered from retaliation in the school district. She decided to assert retaliation within the protections of Section 504 of the Rehabilitation Act.

You be the judge for this case. Which of the following was the court's ruling? Select A or B.

- A. The court ruled that Section 504 did not protect her right to advocate for her students.
- B. The court ruled that, because of her advocacy efforts, she had the right to claim retaliation under Section 504.

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#### FIGURE 10.6

A Court Case: *Sturm v. Rocky Hill Board of Education*

## ▶ TeachSource Video Case Activity

Watch the TeachSource Video Case entitled "Legal and Ethical Dimensions of Teaching: Reflections from Today's Educators." In this video, you will hear several educators discuss the daily ethical issues that they face and how they resolve those issues acting responsibly and in the best interests of the students.

### QUESTIONS

1. After watching this video, what do you believe are the major ethical issues that might be seen within the IEP process and why?
2. What will you do if you observe a teacher not following an IEP? What steps will you take?
3. How do you express your opinion when you see that a student is not getting the services that are outlined in the student's IEP?
4. How can you be proactive in learning information about special education laws?



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As an important member of the IEP team, the teacher should ask for a new IEP if he or she believes that the student is not making progress. Within the IEP meeting, the teacher should present the relevant information to substantiate his or her beliefs that changes need to be made. If the team does not agree with this information and consensus is reached that is not in accord with the teacher's belief, then the teacher has an obligation to file a *minority report*. Such a report allows the teacher to voice his or her beliefs about the needs of the student.

## I Have a Kid Who...

### What About Jesse?

When Jesse enrolled in kindergarten, his mother told the principal and his kindergarten teacher that she had obtained an evaluation for Jesse. Jesse had been diagnosed with ADHD and was on medication that was administered at home. She offered to provide a copy of the evaluation to the school. The principal told her the school didn't need to have the information. Jesse had problems focusing in kindergarten and his teacher recommended that he be retained. The parent was upset and requested that Jesse have an evaluation by the school. The kindergarten teacher thought that would be a good idea but the principal thought that another year in kindergarten would make a positive difference, so Jesse repeated kindergarten.

Jesse had a different teacher his second year in kindergarten and he continued to have difficulty staying on task. His mother again asked for another evaluation and the new kindergarten teacher thought that would be a good idea. The principal told the mother to take Jesse back to the doctor to evaluate his medication. Jesse's mother did that and his medication was changed. Jesse began to do

better and went on to the first grade. In first grade, Jesse struggled with reading. By the end of the first semester, Jesse was behind his peers. His mother again asked for an evaluation and the first-grade teacher and principal told the mother it was not necessary; they wanted to wait to see if he would catch up. He ended his first-grade year not reading at all but went to second grade.

In second grade Jesse struggled more with his reading and his mother got an attorney and requested that he be evaluated. The evaluation was finally done, and it was determined that Jesse had a significant learning disability. The mother, together with the attorney, took the school district to a due process hearing.

### QUESTIONS

1. What were the legal responsibilities of each of Jesse's teachers and the building principal at the school?
2. How do you think the due process hearing officer ruled in this case and why?

## Did You Get It?

An 8-year-old Texas girl with spina bifida required intermittent catheterization every few hours, including in school, in order to avoid kidney damage. The Supreme Court ruled that the school district had to include this procedure as a related service. This case was

- School Committee of the Town of Burlington v. Department of Education of the Commonwealth of Massachusetts* (1985)
- Zobrest v. Catalina Foothills Sch. Dist.* (1993)
- Irving Independent School District v. Tatro* (1984)
- Arlington Central School District v. Murphy* 05-18 (2006)

## Chapter Summary

- Public Law 94-142 was the first federal special education law in the United States. This law provided for a free, appropriate public education. This law has had several revisions since its passage in 1975 and is now the Individuals with Disabilities Education Act (IDEA 2004).
- Laws protect the rights of students with disabilities to have an education and without those laws some children might not receive an education or would not receive an appropriate education. Laws mandate that all school districts provide an appropriate education in the least restrictive environment to all students with disabilities regardless of the severity of the disability.
- Key requirements of the Individuals with Disabilities Education Act of 2004 include an individualized educational program for all students whose disability has an adverse impact on their educational performance. That IEP must be reviewed at least once a year. Students have the right to a free appropriate public education in the least restrictive environment. Parental participation is required.
- There are other laws that impact the education of students with disabilities. Those laws include Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, FERPA, and No Child Left Behind.
- Over the years, the Supreme Court has defined what is an appropriate education, what is a free education, what specific related services must be provided, and what disciplinary measures are appropriate for students with disabilities.

## Questions for Discussion and Reflection

- Why is it so important to have laws and regulations that protect the rights of students with disabilities?
- Do you believe that school districts would provide services if they were not mandated to do so? Why or why not?
- What are the laws that protect the rights of students with disabilities?
- What is the major difference between Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act—2004?
- What is the 4-prong test established to determine least restrictive environment?
- Which of the Supreme Court cases do you believe has had the most impact on students with disabilities and why?

## Key Terms

adequate yearly progress (AYP) (p. 297)  
individualized education program (IEP) (p. 286)  
least restrictive environment (LRE) (p. 293)

related services (p. 286)  
transition (p. 287)  
zero reject (p. 288)