

How to

Prevent Special Education Litigation

EIGHT LEGAL LESSON PLANS

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Introduction and Overview

As faculty members in education law and policy from five different universities around the country, we wrote this book because we discovered that it is needed. All educators and school leaders must be informed about the legal rights of students with disabilities; however, research documents—and we have observed in our classrooms—that many educators are woefully underprepared in special education law. This introductory chapter explains why educators should become better informed about legal issues related to students with disabilities. It also provides an overview of the book’s purpose, content, and organization.

WHY THIS BOOK IS NEEDED

A national survey found that the vast majority of American teachers have taken no courses in school law in either their preservice or inservice programs (Schimmel & Militello, 2007). The survey also revealed that as a result, most teachers are uninformed or misinformed about their basic legal rights and responsibilities and those of their students. This lack of information is especially evident regarding special education laws that impact almost every public school and even nonpublic schools.

The fact that teachers are poorly informed about special education law is a serious problem for three reasons. First, there is more litigation involving special education issues than any other area of school law (Katsiyannis & Herbst, 2004). In fact, legal scholars have warned that special education is one of the “most contentious” and “important” topics in school law (Eckes, 2008, pp. 8–9). Second, because many educators are confused about special education law, they unintentionally violate their students’ rights and fail to carry out their legal responsibilities (Schimmel, Eckes, & Militello, 2010). Even though over half of students with disabilities are now educated in general education classrooms (Institute of Education Sciences, 2010), most teachers are not required to complete coursework in special education (Institute of Education Sciences, 2010). As a result, educators may unwittingly expose themselves and their respective schools to liability for violating the rights of students with disabilities (Katsiyannis, Losinski, & Prince, 2012). Third, when educators describe what legal issues most concern them, special education is often at the top of the list. According to one school superintendent, “Special education is

perhaps the most complex and emotional aspect of public school life" (Berlin, 2009, p. 734).

For these three reasons, there is a critical need to help school personnel become legally literate about special education. Both special education directors and school principals are in a unique position to meet this need and to provide their colleagues with necessary information about special education laws. Many school leaders, however, do not feel they have the time, content knowledge, or teaching materials that are essential to help their staff learn about special education mandates (Militello, Schimmel, & Eberwein, 2009).

THE PURPOSE OF THIS BOOK

We have written this book in order to meet the critical need for special education law instruction in schools. The book is not intended to replace the important consultation that occurs between school employees and their attorneys. Therefore, nothing in this book should be construed as legal advice and should not be acted on as such. Instead, our book presents legal information intended to provide educators with the legal knowledge, understanding, and skills that enable them to apply relevant legal rules to their everyday practice. Its goal is not to help educators win in court; instead, its purpose is to help educators stay out of court by practicing preventive law. Although other scholarly books exist about special education law, this is the *only* book designed to provide busy school leaders with the materials they need to inform and educate teachers and other school officials about the basic principles of special education law.

When school leaders become effective law teachers, their staff members will be able to obtain information they need about special education law from a reliable source, rather than from the rumors and myths swirling around the teachers' lounge. By having legally literate staff who can spot and prevent legal issues from occurring, school districts will benefit because their educators will make fewer legal mistakes. Consequently, educators' adherence to legal requirements of special education should reduce the time and energy that busy school leaders must devote to dealing with violations of the law and subsequent litigation, fielding and resolving parental complaints about special education, and correcting inadvertent errors by school employees. Equipped with a clear understanding of the basic requirements of special education law, educators will be able to uphold the law with confidence, and will be empowered to protect their students' educational rights, their schools' exposure to liability, and their own educational practices.

HOW TO USE THIS BOOK

The authors have designed the special education legal lessons in this book especially for busy professionals with no prior legal training. The book includes

eight easy-to-implement legal lessons within a prepackaged curriculum; therefore, no lengthy preparation is necessary. We have written the lessons in a straightforward manner using easy-to-understand terminology, not legal jargon. Any educator can teach the lessons; therefore, special education directors, principals, assistant principals, teachers, and other school professionals can teach their colleagues about special education law. In addition, university instructors can incorporate the book into their courses as they educate future teachers and administrators about special education.

This book contains all the necessary materials and scripts, so that the facilitators of the lessons simply need to deliver the content provided. The lessons are interactive in order to maintain the active engagement of the participants. After each lesson, facilitators may use measurable objectives and assessments to ensure that the participants learned the intended content of the lesson.

Because each lesson takes approximately 1 hour to complete, educators can use this book in a variety of ways. School officials can include the lessons as part of faculty meetings or other professional development sessions. For example, a special education director or principal might lead a group of teachers through a lesson, conduct the postlesson assessment, and review the results with teachers. Alternatively, a principal may wish to assign different groups of teachers to lead lessons at each faculty meeting throughout the year. Educators can also tailor the lessons to suit the needs of an individual school or district. Finally, university professors may wish to assign a lesson as an individual or group assignment for students to review, then present to their classmates.

OVERVIEW OF THE LESSONS

This book addresses important special education legal issues occurring in schools today. All of the lessons utilize actual situations that have led to expensive litigation. Topics include:

- Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973 (Section 504)
- Americans with Disabilities Act (ADA)
- Eligibility
- Response to Intervention (RtI)
- Free Appropriate Public Education (FAPE)
- Individualized Education Programs (IEPs)
- Least Restrictive Environment (LRE)
- Discipline
- Due Process Hearings and Alternative Dispute Resolution
- Transition Services
- Parental Participation and Advocacy.

The content appears in the following eight lesson plans:

Lesson 1: Why Learn About Special Education Law?

Lesson 2: What Are the Main Federal Entitlements and Protections?

Lesson 3: Who Is Eligible for Special Education?

Lesson 4: How Can We Ensure an Appropriate IEP?

Lesson 5: What Does It Mean to Teach Students in the Least Restrictive Environment?

Lesson 6: How Are Students with Disabilities Disciplined Differently?

Lesson 7: Why Must We Plan for Students' Lives Beyond High School?

Lesson 8: Why Is Fostering Family-School Relationships Important?

ORGANIZATION OF EACH LESSON

Each lesson begins with an Introduction for Facilitators designed to provide the facilitators with a brief background on why the topic is significant. The remainder of each lesson includes the following sections:

- Introduction for Facilitators
- Materials Needed
- Hook
- Background, Purpose, and Objectives
- Activities
- Questions for Conversation
- Test Your Knowledge
- Additional Resources
- References

The facilitators may present the entire lesson within an hour-long faculty meeting. Alternatively, because every lesson includes predictable time expectations for each subsection, it is also possible to present only a portion of a lesson to teach educators about the law.

Introduction for Facilitators. Facilitators review the Introduction prior to leading the lesson. By doing so, they are aware of the main topics and significance of the lesson.

Materials Needed. Facilitators should also review this section prior to presenting each lesson in order to identify what materials will be needed throughout the lesson (e.g., projector and screen, video clips, dry-erase boards and markers).

Hook. The purpose of the hook—also known as the anticipatory set—is to capture the participants' attention; it should motivate them to want to learn more. Hooks use a variety of strategies such as skits where participants/facilitators role-play common legal dilemmas, and video clips of legal issues followed by participants' discussion.

Background, Purpose, and Objectives. The next section provides the background on the topic, so that the participants have the requisite legal information to complete the lesson's activities. The facilitators also explicitly tell participants the learning objectives for the lesson.

Activities. The participants then have an opportunity to apply the law through engaging in a variety of activities. This interactive format allows them to develop the skills they will need when encountering special education dilemmas in the future. Not only are the participants more likely to remain attentive while engaging in activities, but they will also be more likely to retain their new knowledge than if they were just passively listening to a lecture. Multiple strategies are employed, including asking small groups to analyze different legal cases, reviewing scenarios to spot and analyze legal issues, role-playing responses to a given scenario, and facilitating small-group presentations.

Questions for Conversation. Presenting content is only half the battle. This section contains a set of frequently asked questions and answers. Facilitators can arrange in advance for participants to ask these questions during the presentation, or they can wait for the questions to arise naturally.

Test Your Knowledge. At the end of each lesson, the facilitators will assess participants' knowledge of the topic. Facilitators will not always include a formal assessment, but may instead use some other strategy to ascertain the participants' knowledge. Examples of assessments include written quizzes and activities where participants view skits and are to spot legal violations portrayed in it.

Additional Resources. Facilitators can choose to learn more about each lesson's content by consulting additional materials that are listed in the book. The resources include relevant websites, books, and articles that can be referenced for further information.

References. The last section of each lesson plan includes a description of any resources used to create the lesson. Citations to relevant laws, cases, and secondary sources are listed.

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