

Chapter 1

THE LEGAL BASIS FOR SPECIAL EDUCATION

What This Chapter Is About

Until the 1970s, students with disabilities were often excluded from public school. Courts, Congress, and the Michigan Legislature have addressed this exclusion.

The federal and state laws that help students with disabilities attend school include the U.S. and state constitutions, the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Michigan Mandatory Special Education Act. Each of these laws independently protects students with disabilities.

The Elementary and Secondary Education Act Amendments of 2001, formerly known as “No Child Left Behind,” affects students with disabilities, but does not create any rights that parents or students can enforce.

For each law, there are rules that explain what the law means. Michigan also empowers intermediate school districts to develop plans for providing services that can define how and where services are provided.

In order to understand your rights, you should know how to interpret laws and legal citations. This chapter includes a simple guide to understanding legal citations.

Advocacy Hints in Chapter 1

- ◆ If your child’s rights under IDEA are affected, look to the U.S. or state constitution to get what your child needs (Page 2).
- ◆ Use the Michigan Administrative Rules for Special Education (MARSE) to learn the details about what schools must provide students in Michigan (Page 5).
- ◆ Ask why if a school says they “cannot” or “have to” do something (Page 5).
- ◆ Contact the Parent Advisory Committee (PAC) at your local intermediate school district (ISD) to learn about the ISD plan and any requests for waivers or deviations from the state law made by your school district (Page 6).
- ◆ Use the Government Printing Office’s “GPO Access” web site to get free access to all federal laws (Page 8).
- ◆ Use the Michigan Legislature and Center for Educational Networking web sites to get free access to

all state laws (Page 9).

Constitutional Law

The United States has a long history of providing students with a public education. Students with disabilities, however, have often been excluded from the classroom and denied educational opportunities. Although the U.S. Constitution does not specifically give students a federal right to education, it does give students some protection against arbitrary or discriminatory treatment.

In the early 1970s, parents and advocates filed lawsuits to establish the right of students with disabilities to a public education. These lawsuits were important steps in obtaining legal rights to education and became part of the national trend toward including people who have disabilities in the mainstream of society.

In *Pennsylvania Association for Retarded Citizens v Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), a federal court found that public schools must provide education and training for all students in Pennsylvania with mental retardation. The court also ordered the schools to provide notice, opportunity for hearing, and periodic reevaluation of changes in a student's educational status.

Mills et al v Board of Education of the District of Columbia, 348 F.Supp. 866 (D.D.C. 1972), was filed because students who had disabilities and lived in the District of Columbia were denied a public education. The court found that these students had the right to a suitable education and ruled that each student had the right to a hearing *before* exclusion from, termination of, or placement into a special program. Detailed due process safeguards were also included in the court decree.

A similar case was also filed in Michigan. In *Harrison v State of Michigan*, 350 F. Supp. 846 (E.D. Mich. 1972), a group of parents filed a federal lawsuit alleging denials of equal protection and due process. The court noted that the parents' claims were valid, but found that the recent enactment of the Michigan Mandatory Special Education Act was likely to resolve the parents' concerns more effectively.

► **Advocacy Hint: It is in the Constitution.** Although constitutional claims have not been used much in recent years because of the passage of federal and state laws, the constitutional rights of students with disabilities still exist. Given that the current laws are amended often, it is a good idea to remember that there are constitutional guarantees to individual services and due process. Also, the Michigan Supreme Court has ruled that the state law gives students the enforceable right to special education supports. *Durant v. State*, 566 N.W.2d 272, 280 (Mich. 1997). Even if the federal law is weakened, students may assert their rights under state law.

Individuals with Disabilities Education Act (IDEA)

In response to these and other federal court cases, Congress enacted Public Law 94-142, the “Education of All Handicapped Students Act of 1975.” P.L. 94-142 has been amended several times, most recently in 2004. In 1990, the name of the Act was changed to the Individuals with Disabilities Education Act (IDEA). The legal citation to IDEA is **20 USC 1400 et seq.**

IDEA directs each state to provide the necessary programs and services to ensure that students with disabilities receive an appropriate education. It also provides a variety of procedures that students and their parents can use to safeguard their rights. In return, the states receive federal funds for special education.

Congress directed the United States Department of Education to issue rules to further define the meaning of IDEA. The most recent rules were issued in August 2006. The legal citation to the rules is **34 CFR Part 300.**

Section 504 of the Rehabilitation Act

Section 504 of the federal Rehabilitation Act of 1973, P.L. 93-112, states that any program receiving federal funds (such as public schools) shall not discriminate against an individual solely because of his or her disability. The legal citation to Section 504 is 29 USC 794. This Act is often referred to as “Section 504” or “504.”

Section 504 requires that school districts act to find students with disabilities and to provide services and accommodations that allow the student to fully participate in district programs and activities. Virtually all special education students also qualify for accommodations, services, and protections under Section 504.

In addition to providing protection from discrimination, Section 504 is also important because the definition of a “child with a disability” is broader than it is in IDEA. Children who do not qualify for special education services under IDEA may qualify for accommodations and other assistance and protections under Section 504.

Just as with IDEA, the U.S. Department of Education has issued rules to implement Section 504 in schools. The legal citation for these rules is **34 CFR Part 104.**

The Americans With Disabilities Act

The Americans with Disabilities Act (ADA) is a federal law model that extends the protections of Section 504 to most public and private programs. Its legal citation is **42 USC 12101 et seq.** The U.S. Department of Justice has issued rules to implement the ADA. The legal citation for these rules is **28 CFR Part 35.**

Disability Rights Michigan

The rules issued under Title II of the ADA, which cover public schools and other government services, include the following requirements:

- ◆ Public schools must complete a self-evaluation to determine if their programs and services are accessible, including barrier-free access for persons with mobility impairments. **28 CFR 35.105(a)**.
- ◆ Public schools with more than 50 employees must also develop a “transition plan” if any buildings require structural changes to become accessible. This plan, which is available for public inspection, should list all the structural changes needed to achieve accessibility and the deadlines for completion of the changes. **28 CFR 35.150(d)**.

Public schools and other government agencies also must provide services in the “most integrated setting appropriate to the needs of qualified individuals with disabilities.” **28 CFR 35.130(d)**. This so-called “integration directive” has been upheld by the U.S. Supreme Court in *L.C. v Olmstead*, 527 U.S. 581 (1999), and there may be future implications for special education students. For example, is providing vocational or instructional services in segregated centers attended only by persons with disabilities the “most integrated setting appropriate?”

The ADA and other antidiscrimination laws have implications for students with disabilities attending private schools. Generally, private entities are covered by Title III of the ADA regardless of whether they receive federal financial assistance (as Section 504 requires). However, the ADA exempts religious schools from coverage, **42 USC 12187**. Such schools may be covered by Michigan’s Persons with Disabilities Civil Rights Act (MPDCRA) if the religious schools accept applications from the general public. **MCL 37.1303**.

Elementary and Secondary Education Act

Although it does not give individual students the right to seek services from schools, the federal Elementary and Secondary Education Act (ESEA) is important to students with disabilities. ESEA requires schools to make adequate yearly progress toward proficiency standards set by the state, not only for all students but for specific subgroups, including students with disabilities. In addition, ESEA mandates that schools must test all students, including students with disabilities, either with a standardized state achievement test or with an alternate assessment available to a small percentage of students with the most significant challenges.

Michigan Mandatory Special Education Act (MMSEA)

Michigan’s Mandatory Special Education Act (MMSEA) states that schools must provide an education designed to develop the maximum potential of every eligible student with a disability. The legal citation to the MMSEA is **MCL 380.1701 et seq.**

The State Board of Education is directed to write rules implementing this Act. These rules, usually referred to as the “Michigan Administrative Rules for Special Education (MARSE),” are found in the Michigan Administrative Code. The legal citation to these rules is **R 340.1700**.

► **Advocacy Hint: State law has more.** The Michigan law has protections for students that go beyond those in the federal law in some cases. For example, students may be eligible for special education services in Michigan from birth to age 26. Also, Michigan law addresses some issues that are not covered in the federal law, such as class size and residency. When thinking about a student’s rights, make sure to consider the protections under state law as well as federal law.

How to choose? Determining which law applies may be confusing. In education, federal law sets the minimum standard each state must meet to continue receiving federal money. If the state sets higher standards than the federal law, schools in the state must follow the higher standards. When state law does not meet the minimum standards of the federal law, the federal law must be followed.

A word about funding. Schools receive federal, state, and local funds. Most of these funds have restrictions on their use. Although school districts must adhere to funding rules, they cannot use such rules to limit or determine the location of services in violation of IDEA’s least restrictive environment provisions. **20 USC 1412(a)(5); 34 CFR 300.114.**

Local and District Policies

Generally, all schools must comply with both the federal and state statutes and the rules and judicial decisions interpreting these laws. **R 340.1701.** Schools do not have authority to deviate from federal law. Under certain circumstances, however, the State Board of Education may waive a state rule, or a school may receive limited permission to deviate from part or all of a rule.

► **Advocacy Hint: When you hear “have to” or “cannot” ...** Many schools and school districts have several written and unwritten policies and procedures for doing business. Sometimes school personnel assert these policies as reasons why they “have to” do something or “cannot” do something to support a student. If you hear this, ask for the basis of the statement to find out if it is grounded in the law.

Intermediate School District (ISD) Plans

Michigan’s school districts are served by 56 intermediate school districts (ISDs). These are sometimes also known as educational service agencies (ESAs) or districts (ESDs). ISDs are county-level education agencies, either individual counties or two or more counties operating jointly. These districts do not, in most cases, enroll students directly, but they provide several different kinds of special education services. In addition, under state law, ISDs have critical planning and enforcement roles. Each ISD must submit a plan to the state describing how the full range of special education services in their area will be provided and describing compliance with other parts of the law, such as outreach, administrative responsibility, staff qualifications, transportation, distribution of funds, and parent advisory committee support. **R 340.1832.** Unless a local school district, public school academy, or parent advisory committee objects under **R 340.1836**, the plan may be approved and then remains in effect until the ISD submits changes or the state

orders changes. **R 340.1831.**

Waivers

The State Board of Education sometimes allows school districts to obtain “waivers” from one or more of the MARSE. There is a process for application and review of the waiver by the State Board of Education. Waivers allow any of those agencies to disregard a state education rule or other state regulation if the agency can meet the intent of the rule more efficiently, effectively, or economically, or if the waiver is necessary to stimulate student performance. **MCL 380.1281(3).**

Deviations

A deviation from a rule is granted only on the basis of specific conditions and terms. The deviation cannot extend beyond the end of the school year. It can be approved only if it serves the best interests of the students. In addition, the deviation cannot be generalized to other situations. **R 340.1734.** Finally, the school must comply with the law until a deviation request is approved by the State Board of Education.

► **Advocacy Hint: The PAC knows.** The Parent Advisory Committee (PAC) of the ISD receives a copy of any deviation request made by that ISD or by any of the school districts within the ISD. The PAC also is one of the three organizations that can object to an ISD plan. To get more information on ISD plans, waivers, or deviations within a district or ISD, the PAC is a good place to start.

Understanding Citations

To be most effective, advocates should understand how to use legal materials and quote legal references. Although using and quoting laws may appear overwhelming at first glance, they are easy to learn. When a person refers to a specific section of law, it is called “citing the law.” The numbers and letters used to denote the section are called citations. Citations, abbreviated as “cites,” simply tell you where in the books in which laws are published that you can find that particular section of the law.

The State of Michigan has a law library that is open to the public. In addition, law school and university libraries usually have the needed law books, as may large public libraries. The State of Michigan’s law library has several services that assist people in finding legal information, and you may contact that library at (517) 373-0630, by e-mail at lmllib@michigan.gov, or through their web site at http://www.michigan.gov/mde/0,4615,7-140-54504_50206_18639---,00.html.

The state publishes a guide to commonly used legal citations in Michigan law. See http://www.michigan.gov/documents/mde/ATJ_Common_Legal_Citations_and_Where_to_Find_Them_335880_7.pdf.

Federal Statutes: The United States Code (USC)

All federal statutes are called Public Laws, abbreviated as “P.L.” Statutes are first introduced into Congress as bills. The first number of the public law identifies which particular Congress enacted the bill. The second number identifies the order in which the bill was enacted. The cite for IDEA is:

P.L. 101- 476

P.L. = Public Law
101 = 101st Congress
476 = 476th bill enacted

P.L. 101-476 is found with other federal statutes in the United States Code (USC). After the bill is enacted, the legal citation changes from “P.L.” to a “USC” cite. The correct legal citation for P.L. 101-476 is 20 USC 1400 *et seq.* *Et seq.* means “and subsequent sections.” P.L. 101-476 is in Title 20, the education title; 1400 is the first section of P.L. 101-476.

20 USC 1400 et seq.

20 = Title 20
USC = United States Code
1400 = Section 1400
et seq = subsequent sections

The correct legal citation for Section 504 is 29 USC 794. This means that Section 504 is in Section 794 of Title 29 of the United States Code.

Federal Regulations: The Code of Federal Regulations (CFR)

Federal regulations are compiled in the Code of Federal Regulations (CFR). IDEA and Section 504 regulations for educational programs are found in Title 34 of the CFR. IDEA regulations begin at Section 300.1. The full citation for these regulations is **34 CFR 300.1 et seq.** Recent changes in federal regulations are reported daily in the Federal Register.

34 CFR 300.1 et seq.

34 = Title 34
CFR = Code of Federal Regulations
300.1 = First Section Number
et seq = and subsequent sections

71 Fed.Reg. 46540 (8/14/06)

71 = Volume 71
Fed. Reg. = Federal Register
46540 = First page number of entry
8/14/16 = Date of publication

Section 504 regulations begin at Section 104.1 of Title 34. The Section 504 regulations regarding special education begin at Section 104.31. The full legal citations for these regulations are **34 CFR 104.1 et seq.** and **34 CFR 104.31 et seq.**, respectively.

► **Advocacy Hint: Find Federal law for free.** The U.S. Government Printing Office maintains web sites for all of the federal laws, including the United States Code and the Code of Federal Regulations. The web site address for the electronic Code of Federal Regulations is <http://ecfr.gov>. Selected sections of the federal law may also be found in the combined MARSE document on the Center for Educational Networking website, www.cenmi.org (see next page).

State Statutes: The Michigan Compiled Laws (MCL)

In Michigan, when a bill is enacted it is called a Public Act (PA), not a public law. For instance, 1976 PA 451 is cited as follows:

1976 P.A. 451

- 1976 = Year of the bill
- P.A. = Public Act
- 451 = 451st bill enacted

Just as federal statutes are compiled in the United States Code, Michigan Public Acts are compiled in the Michigan Compiled Laws, abbreviated as “MCL.” The “School Code of 1976” begins at Section 380.1 of the MCL. The “Mandatory Special Education Act” begins at Section 380.1701 of the School Code. The full legal citation for the School Code of 1976 is MCL 380.1 *et seq.* The full legal citation for the Mandatory Special Education Act is MCL 380.1701 *et seq.*

MCL 380.1701 et seq.

- MCL = Michigan Compiled Laws
- 380.1701 = First Section of law
- et. Seq = and subsequent sections

State Rules: The Administrative Code

PA 451 directed that rules be enacted to implement the law, and the Michigan Administrative Rules for Special Education were passed in 1979. The rules are in the Michigan Administrative Code, which has all of the rules implementing various state laws. The Michigan Administrative Rules for Special Education begin at **R 340.1701**.

► **Advocacy Hint: Find Michigan law for free.** The Michigan Legislature maintains a web site that provides free access to Michigan laws. The web site address is <http://www.legislature.mi.gov>. The Center for Educational Networking (CEN) maintains a web site for the state rules and has information about educational resources, including a statewide directory of special education personnel. The CEN web site address is <http://www.cenmi.org>.

Court Cases

Courts issue opinions which interpret both state and federal laws and regulations and have the force of law themselves. Court opinions are indexed by the names of the parties, the legal citation (which includes the name of the case reporting series, the volume number, and the page number), the deciding court, and the year of the decision. The citation makes these cases easy to find in any law library. For example, *Durant v State, 566 N.W.2d 272, 280 (Mich. 1997)*, is as follows:

MCL 380.1701 et seq.

MCL = Michigan Compiled Laws
380.1701 = First Section of law
et. Seq = and subsequent sections

Sometimes cases are so recent that they are not yet in a case reporter, such as:

L.C. v Olmstead, No. 98-536 (U.S. 1999)

L.C. v Olmstead = Names of the parties (names of minors or individuals under guardianship are sometimes shown only as initials.
No. 98–536 = The case number used by the court
U.S. 1999 = The deciding court (in this case, the United States Supreme Court), and the year of decision

Responsible Agencies

Federal Agencies

The U.S. Department of Education is responsible for implementing federal laws regarding education. Under this Department, the Office of Special Education and Rehabilitative Services (OSERS) assumes responsibility for all educational and vocational services provided to people who have disabilities. Included in the Office of Special Education and Rehabilitative Services are the Office of Special Education Programs (the arm of OSERS that implements IDEA), the Rehabilitation Services Administration (RSA), and the National Institute on Disability and Rehabilitation Research. The federal Department of Education also assumes the educational and vocational responsibilities of the Office of Civil Rights (which enforces Section 504).

State Agencies

The State Board of Education sets state education policy and assures that special education services are provided by local and intermediate school districts. Policy made by the Board is carried out by the Michigan Department of Education. The Department has the day-to-day responsibility for overseeing all education programs and services provided in Michigan. The special education services division of the Department has specific responsibility for all special education instruction, programs, and services.

Contact Information

- ◆ If you believe the state has violated its obligations under IDEA, you may contact the U.S. Department of Education, Office of Special Education Programs (OSEP), 400 Maryland Ave., S.W., Washington, DC 20202-7100, or call (202) 245-7459.
- ◆ If you believe a school district or intermediate school district has violated IDEA, you may contact the Michigan Department of Education, Office of Special Education, 608 W. Allegan St., P.O. Box 30008, Lansing, MI 48909, or call (517) 373-0923.
- ◆ If you believe the state, school district, or intermediate school district has violated Section 504, you may contact the U.S. Office for Civil Rights, 1350 Euclid Ave, Suite 325, Cleveland, OH 44115, (216) 522-4970. You may also contact the Washington, DC, office of OCR through the OSEP address above, or call (800) 421-3481.