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Overview of Presentation

- Test Your Special Education Legal Knowledge
- Legal Illiteracy: What Does the Research Tell Us?
- Legal Literacy: What Can You Do to Increase Your Colleagues' Legal Literacy?
- Samples from the book
- Additional Resources
- Q/A





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Who has felt frustrated by the convoluted maze of state & federal legal mandates surrounding students with disabilities?





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TEST YOUR SPECIAL EDUCATION LAW KNOWLEDGE



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**Legal Knowledge is
NOT Enough**



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**Today's Administrators &
EDUCATORS must be
Legally LITERATE.**



What is legal literacy?

“the legal knowledge, understanding, and skills that enable educators to apply relevant legal rules to their everyday practice. Those who are legally literate are able to spot legal issues, identify applicable laws or legal standards, and apply the relevant legal rules to solve legal dilemmas” (Decker & Brady, 2016).



Compare

Knowledge

A manifestation determination is

- a. A meeting of the principal and others at the school who work with the student to determine his/her IEP.
- b. A meeting of a student's IEP team to determine whether his/her misbehavior was a result of his/her disability.
- c. An evaluation of a student who is suspected of having a disability to determine whether he/she is eligible for special education and related services.

Literacy

Isaac receives special education services. He has already been suspended for 8 days this academic year. Today, he got in a fight and was suspended for 3 days. Luckily, no one was seriously injured. When Isaac's parents come to school to pick him up, they ask when his IEP team will convene to discuss his discipline. The principal explains that there is no reason for the IEP team to meet because the discipline decisions are made by the administrators at the school.

- a. This was legal because the principal is permitted to decide whether Isaac's misbehavior was not related to his disability.
- b. This was legal because due to the laws surrounding zero tolerance, students with disabilities who engage in violence must be disciplined the exact same way as students without disabilities.
- c. This was illegal because Isaac is going to be removed from school for more than 10 days and therefore, his IEP team should have met.
- d. This was illegal because any time students with a disabilities are removed from their placement, they must be transferred to an Interim Alternative Educational Setting (IAES).
- e. a & b

Legal Illiteracy: What Does the Research Tell Us?



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Research is very limited; yet confirms educators & administrators:

- **lack legal knowledge** (Schimmel & Militello, 2007; Militello, Schimmel, & Eberwein, 2009)
- **lack legal training** (Schimmel & Militello, 2007; Militello, Schimmel, & Eberwein, 2009)
 - principal & superintendent certification typically require one school law course (Stephens, 1983)
 - rare for pre-service teachers complete a school law course (Eckes, 2008; Gullatt & Toilet, 1997; Schimmel & Militello, 2007)
- **report changes in attitudes & behaviors with training** (Decker, Ober & Schimmel, 2017)
 - 88% reported one grad-level School Law course increased their confidence
 - 85% indicated that course altered their behaviors



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Teachers & administrators want more legal training

- 85% of the nearly 500 principals they surveyed said they would change their behavior if they understood the law more (Militello et al., 2009)





Increasing legal literacy could improve schools.

- Avoid expensive litigation
- Prevent OTHER serious issues for teachers, administrators, & students.
 - When school employees fear litigation, it negatively affects the operation of schools (Zirkel, 2006)
 - Principals may unnecessarily end programs out of fear of liability (Joyce, 2000)
 - Teachers may “unknowingly violate students’ constitutional rights” or “view the law as a source of fear & anxiety” (Schimmel & Militello, 2007, p. 257)
- Empower educators to make better decisions (Decker, 2014)
- Prepare educators to advocate for reform (Decker, 2014)
- Other reasons?



What about *special education* legal literacy?

- No peer-reviewed, empirical research
- Majority of principal preparation programs do not require principals to complete any formal coursework in special education law (Bineham, 2014; Cusson, 2012; Powell, 2010)
- Approx. half of the state certification requirements required educators to complete formal coursework in special education law (Bocala, Morgan, Mundry, & Mello, 2010).



But why should you *care*?

Legal violations surrounding students with disabilities range from morally reprehensible to more common mistakes involving procedural errors.



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Special education is the most litigated area of education lawsuits (Zirkel & Johnson, 2011)





TEACHERS are woefully underprepared in special education law

- Approximately 13% of students receive special education & related services (U.S. Dept. of Educ., 2016)
- In past decade, the number of special education students has increased 30%+ (National Education Assoc., 2011)
- 75%+ of special education students spend part or all of their day in general education classrooms (National Education Assoc., 2011)
- Special education “results from a complex & oft times confusing combination of federal law & regulation, individual state constitutions, state law & regulation, & policy traditions” (Rhim, Ahearn, & Lange, 2007, p. 50)



Districts encounter numerous & pervasive OCR investigations

- SWDs represent only 13% of the student population; yet, nearly 60% of students placed in seclusion and 75% of those physically restrained at school are SWDs (U.S. Dept. of Educ., 2014).
- Suspension rates are more than twice as high (13%) for SWDs than for students without disabilities (6%) (U.S. Dept. of Educ., 2014).



IDEA is an under-funded mandate

- When IDEA was enacted, Congress stipulated federal gov't would pay 40% of avg per pupil expenditure for each SWD; however, Congress has never appropriated that amount (NSBA Office of Advocacy, 2014).
- IDEA remains an underfunded mandate. State educational agencies must nonetheless ensure local school districts follow the IDEA's mandates.



Inequities & litigation will continue

- SWDs are bullied and harassed more than their non-disabled peers (Blake et al., 2012)
- Overrepresentation of students of color receiving special education (Garda, 2005)
- Dissatisfaction with inequities of the due process system (Cope-Kasten, 2013)

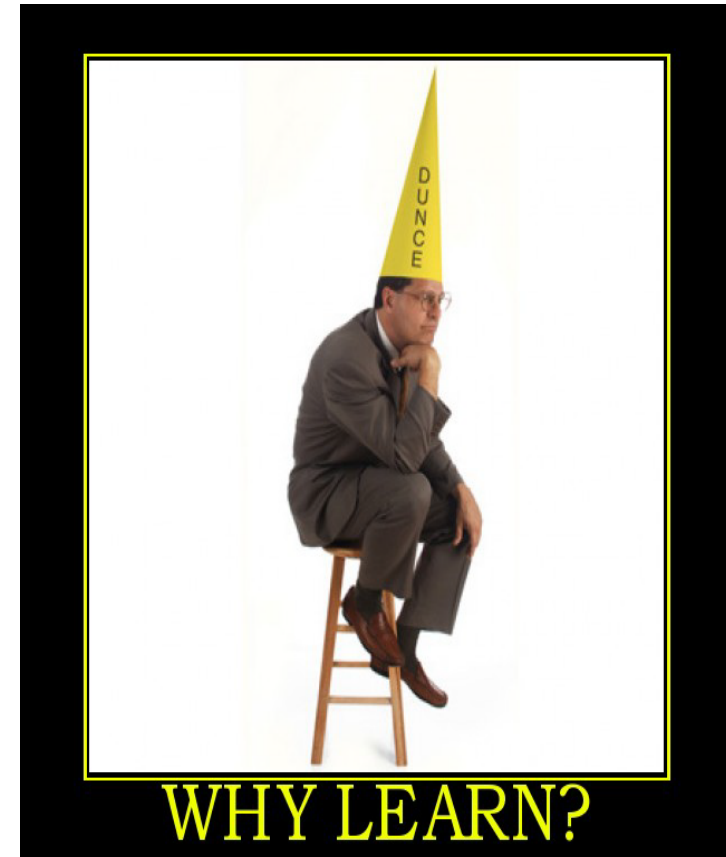




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Discuss:

*What have you
done to increase
your colleagues'
special education
legal literacy?*



Legal Literacy: What Can You Do to Increase Your Colleagues' Legal Literacy?



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Current Legal Literacy Options

Events

Conferences
(e.g., McCarthy
Institute)
PD sessions
Educ. Law
Certificate (IU)

Updates

Newsletters
Websites
Webinars
Blogs
Podcasts

Publications

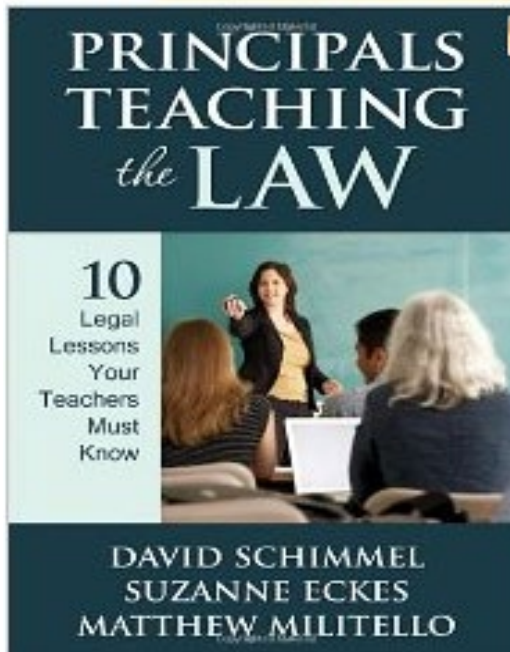
Books (*How to
Prevent Spec.
Educ. Litigation*)
Journal articles



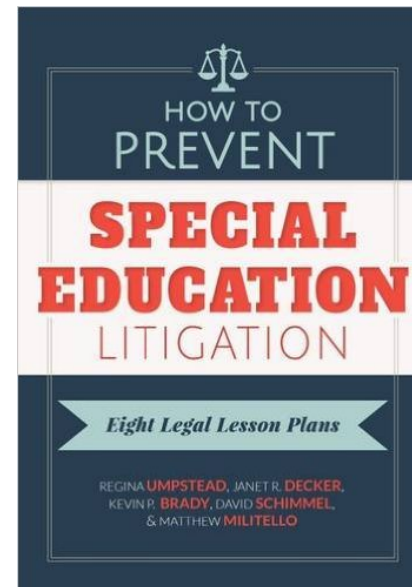
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Professional Development: Legal Lesson Books

Schimmel, Eckes, &
Militello (2010)



Umpstead, Decker,
Brady, Schimmel, &
Militello (2015)





Unique Format

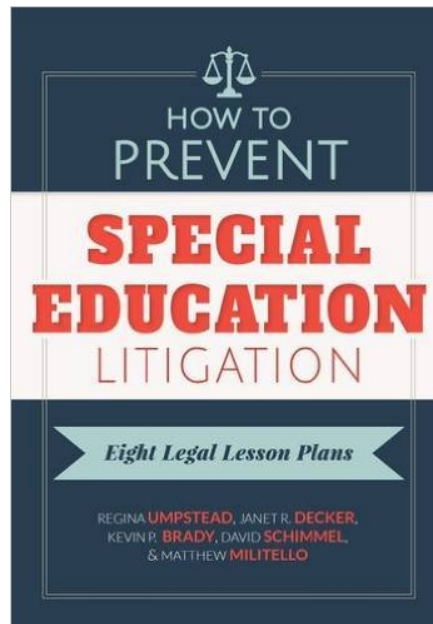
- Easy-to-implement lesson plans that require no legal knowledge
- Can be facilitated by principals, special education directors, teachers, or university instructors
- One-hour sessions where participants learn by engaging in practical activities instead of only passive reading about the law
- PURPOSE= to teach others how to *apply* legal principles to practical, everyday situations



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How to Prevent Special Education Litigation: 8 Legal Lesson Plans

Because special education is the most common type of litigation in schools today, this book focuses on the issues that are at the center of these lawsuits.





Topics

1. Why learn about special education law?
2. What are the main federal entitlements and protections?
3. Who is eligible for special education?
4. How can we ensure an appropriate IEP?
5. What does it mean to teach students in the Least Restrictive Environment?
6. How are students with disabilities disciplined differently?
7. Why must we plan for students' lives beyond high school?
8. Why is fostering positive family-school relationships important?



Format of Each Legal Lesson

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

Samples from the Book



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SAMPLE: Intro. to Facilitators

Lesson 3: Who Is Eligible for Special Education?

A central question in special education litigation is “who is protected” under current federal special education laws. The issue of student eligibility under existing special education laws is often an area of dispute between educators and the parents/guardians of students with disabilities. Today’s school officials sometimes fail to follow proper policies and procedures related to student eligibility in special education laws. In a growing number of instances, for example, courts have held the school district legally responsible for improperly finding a student ineligible for special education and related services.



SAMPLE: Materials Needed

- Who is Eligible Chart Handout for each participant, and facilitator script.
- Game show materials including facilitator script, prizes, 5 green signs stating “ELIGIBLE” and 5 red signs stating “NOT ELIGIBLE, ” handout or other visual display of the 3 scenarios, a sign stating “APPLAUSE” PLEASE! And the answer key to the scenarios;
- Copies of the quiz for each participant (see Test Your Knowledge”, and the answer key; and
- Optional: Objectives visually displayed



SAMPLE: Hook (10 minutes)

- To begin the lesson, the facilitator will ask the participants to view a 6 minute video. This video details some of the most common questions regarding special education eligibility rules. It was created for parents in New Jersey, but it applies to all states. After the video is over, ask the participants to share their thoughts about the video with other participants.



SAMPLE: Background, Purpose & Objectives (5 Minutes)

Next, the facilitator will read the following **Facilitator Script**, to the participants or paraphrase the information in their own words. While reading the script, the Facilitator will distribute the “Who Is Eligible Chart” handout to each participant.

The specific objectives of today’s lesson are:

- (1.) Explore how disability is defined differently under the three leading special education laws: the Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA).
- (2.) Apply legal requirements to student scenarios to determine student eligibility.



SAMPLE: Handout

IDEA	Section 504	ADA
<p><u>Eligibility criteria:</u></p> <p>For students aged 0-21 prior to and in elementary and secondary education, who are determined by a multidisciplinary team to be eligible within one or more of 13 specific disability categories and who need special education and related services. Categories include autism, deafness, deaf-blindness, hearing impairments, mental retardation, multiple disabilities, orthopedic impairments, other health impairments, serious emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, and visual impairments.</p>	<p><u>Eligibility criteria:</u></p> <p>Any person who:</p> <ul style="list-style-type: none">(1) has a physical or mental impairment that substantially limits one or more major life activities,(2) has a record of such an impairment or(3) is regarded as having such an impairment. <p>Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.</p>	<p><u>Eligibility criteria:</u></p> <p>Any individual with a disability who:</p> <ul style="list-style-type: none">(1) has a physical or mental impairment that substantially limits one or more life activities;(2) has a record of such impairment; or(3) is regarded as having such an impairment. Further, the person must be qualified for the program, service, or job.

Source: Disability Rights Education & Defense Fund (DREDF).



SAMPLE: Activity (30 Minutes)

Game Show Activity: The facilitator will introduce a game show called “You Make the Call.” The facilitator will divide the participants into four teams that will compete to get the most correct answers on the following three scenarios. The facilitator will read the scenarios aloud; then the teams will discuss the scenarios and decide if the student is eligible for special education services. A designated team leader will hold up either a green sign that says “ELIGIBLE” or a red sign that says “NOT ELIGIBLE.”



SAMPLE: Activity (30 Minutes)

- **Scenario 1:** Suzanne, a 16 year old high school student, was recently involved in an accident where she lost significant hearing in both ears. Suzanne had an operation where she received cochlear implants, which have greatly improved her hearing, but she continues to be labeled “hearing-impaired” at her high school. Prior to the accident, Suzanne received mostly A’s and B’s on her report card. After the accident, her grades have declined slightly but are still mostly A’s and B’s. Suzanne’s parents asked the school to provide 2 hours of individual tutoring based on her hearing impairment. Is Suzanne eligible for special education and related services under the IDEA, Section 504, and/or the ADA?



SAMPLE: Questions for Conversation (5-10 Minutes)

Before the lesson, the facilitator will hand out the following questions to three different participants and request that the participants ask the questions during the lesson. Alternatively, the facilitator may devote time after the Activity portion of the lesson for Q-and-A.

- 1. What happens when a school determines that a student is not eligible for special education services under the IDEA?*
- 2. Does a student need to be academically failing courses in order to be eligible for special education services under the IDEA?*
- 3. Are students previously eligible under the IDEA but who no longer qualify, automatically eligible for Section 504 special education services?*



SAMPLE: Test Your Knowledge (5-10 Minutes)

1. A student identified with one or more of the current thirteen eligibility disability categories automatically qualifies for special education and related services under IDEA.
2. Local school districts have the discretion to use the term “developmental delay” with children who are 3 through 9 years of age, if the student experiences developmental delays in the areas of physical, cognitive, or emotional development.
3. Under Section 504, eligibility is limited to students with physical impairments that substantially limit one or more major life activities.
4. Similar to the IDEA, Section 504 students are required to have an IEP.

Additional Resources



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Conferences

- **Education Law Association**

- Conference (Cleveland Nov. 7-10), members-only area of website, a monthly newsletter, webinars, podcasts, Facebook page (<http://www.facebook.com/groups/177576668640/>), a Twitter account (@<https://twitter.com/ELAOffice>) & LinkedIn group (<http://www.linkedin.com/groups?gid=159675>).

- **Indiana University Martha McCarthy Law & Policy Summer Institute**

(<http://education.indiana.edu/graduate/programs/ed-leadership/mccarthy-institute.html>)



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FOR YOUR STAFF: IU's Education Law Online Certificate

- 15 hours online
 - A675 Leadership in Special Education
 - A608 Legal Perspectives in Education
 - A615 Advanced School Law
 - A600 Legal Research Methods
 - Elective
- <http://iuconnected.iu.edu/CertificateDegreePrograms/EducationLawCertificate/AbouttheProgram.aspx>



Hundreds of Ways to Increase YOUR Legal Literacy

- Modules Addressing Special Education and Teacher Education (MAST): <http://mast.ecu.edu/>; <http://mast.ecu.edu/picker.php>
- Modules Specific to Learning Disabilities: <http://www.ldonline.org/index.php>
- Vanderbilt's IRIS modules relevant to SWDs:
 - Accommodations <https://iris.peabody.vanderbilt.edu/iris-resource-locator/?term=accommodations>
 - Assistive Technology <https://iris.peabody.vanderbilt.edu/iris-resource-locator/?term=assistive-technology>
 - Behavior Management <https://iris.peabody.vanderbilt.edu/iris-resource-locator/?term=behavior-classroom-management>
 - Disability <https://iris.peabody.vanderbilt.edu/iris-resource-locator/?term=disability>
 - RtI/MTSS <https://iris.peabody.vanderbilt.edu/iris-resource-locator/?term=rti-mtss-includes-intensive-intervention>
 - Transition <https://iris.peabody.vanderbilt.edu/iris-resource-locator/?term=transition>
- Project IDEAL: <http://www.projectidealonline.org/v/disability-categories/>
- PACER workshops: <http://www.pacer.org/workshops/>
- PREP Parent State-specific Parent Guides: <https://prepparents.org/resources/for-parents/special-education-parent-guides/>
- Lists of Resources found at
 - <http://insource.org/resources/> (some are Indiana-specific, but similar websites with state-specific information can be found through state department of education and Technical Assistance Partnerships)
 - National organizations: <http://insource.org/resources/links/national-organizations/> and <http://www.parentcenterhub.org/find-your-center/>
 - US DoE's organizations: <https://www2.ed.gov/about/contacts/gen/othersites/specedrs.html>
 - US DoE's FAQs: <https://answers.ed.gov/ics/support/KBLList.asp?folderID=23>
- NICHY, The Americans with Disabilities Act <http://nichcy.org/laws/ada> Section 504 of the Rehabilitation Act of 1973 <http://nichcy.org/laws/section504>
- PACER, ADA Q&A: Back to School <http://www.pacer.org/publications/adaqa/school.asp>
- U.S. Department of Education Office for Civil Rights, The Americans with Disabilities Act <http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html>
- U.S. Department of Education Office for Civil Rights, Protecting Students with Disabilities <http://www2.ed.gov/about/offices/list/ocr/504faq.html>
- U.S. Department of Justice Civil Rights Division (2009) Information and Technical Assistance on the Americans with Disabilities Act <http://www.ada.gov/>
- US DOE Dear Colleague Letters & other resources
- Cornell Legal Information Institute
- Duke University, Voices of American Law
- National School Boards Association Legal Clips <http://legalclips.nsba.org/subscribe/>
- Wrightslaw (<http://www.wrightslaw.com>)
- The School Law Blog (Education Week blog by Mark Walsh)
- On Special Education (Education Week blog by Christina Samuels)
- Disability Scoop (<http://www.disabilitycoop.com>)

Q & A

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