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PERSPECTIVE

## The complex legal terrain of special education law

By Jennifer Chang

Cases involving students with disabilities are complex and require a specialized understanding of education law and how it applies to relatable legal situations beyond education such as family law and personal injury matters. In addition to state laws and regulations, legal practitioners must be aware of what rights are available to children, parents, and guardians under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (FAPE) when handling cases that involve a child with special needs. When making legal decisions that involve children with special needs, it is crucial to consider their unique circumstances to provide proper legal support and ensure their access to a free and appropriate education. Know these legal considerations when working with families of children with special needs.

### Education advocate vs. education rights attorney

In a post-pandemic era when district shortages continue to challenge the successful fulfillment of educational services, education advocates play an important role in protecting the rights of children and providing relevant advice to families. (*The difference between special education advocates and attorneys.* Understood.com. Lee, Andrew M.I., JD.) In California, advocates help increase accessibility to accountability and discourse by assisting parents in filing compliance complaints for failure to provide services. However, education



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advocates do not possess licensure, nor can they represent individuals in a legal dispute.

In an already backlogged court system, compliance complaints can take an extensive amount of time to process, with information becoming inaccessible to parents. Complaints generally result in mandated IEP meetings – a right that parents of children with special needs already have – and minor changes to the school's action plan and documentation priorities. Furthermore, any complaints pursued independently by a parent or advocate against a California school district may result in losing the ability to raise the same issue in a formal due process hearing, even if an attorney later brings the issue.

A due process hearing, brought against a school district by an education rights attorney, forces the court to act within a mandated time limit, minimizing the time a child is without services and resulting in a much higher rate of change and accountability for the district, schools, and teachers involved. A due process hearing puts the legal advocate in the driver's seat and enables individuals to take a proactive stance against the infractions of a school district.

Legal concerns involving children with special needs reach well beyond educational service complaints. When a family dispute or physical assault impacts a child with special needs access to education, working with an education

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rights attorney is the best way to ensure the child's rights are not compromised.

### **Education rights considerations in a contested divorce**

Divorcing families presents a unique complication to a child's education services. When divorced or divorcing parents disagree about their child's special educational needs and related services, it is common for issues to arise. While both parents have legal rights under IDEA to make decisions about their child's education, legal proceedings surrounding educational requirements, such as a compliance complaint or a due process hearing to resolve the identification, evaluation, or educational placement of the child will come to a standstill until parents can make a unified decision about the child's education.

Lost months or even years of access to education due to arguing parents can greatly impact a child's learning development. Family law attorneys can assist divorced or divorcing parents in drafting a final divorce agreement that explicitly

outlines which parent holds the "educational decision-making authority" for their child's special education, including access to educational documents to ensure that any educational concerns that arise can be addressed quickly. If needed, a minor's counsel can be appointed to represent the child's needs to make the most appropriate decisions in the best interest of the child while family law matters are sorted.

### **Bullying/assault cases for students with disabilities**

Cases of in-school physical harm involving children with disabilities are equally layered with complexity. Studies continually show that children with disabilities are at an increased risk of being bullied in schools. A 2021 report published by the United Nations Educational, Scientific and Cultural Organization (UNESCO) found that "children with disabilities are three to four times more likely to be victims of any type of violence than their non-disabled peers." (*Violence and bullying in educational settings: the experience of children and young*

*people with disabilities.*" UNESCO. Research report no. ED-2021/WS/12 Rev., Paris, UNESCO, 2021.)

If a child is purposely injured by another student, and it is clear that the school district was negligent in its actions to prevent repeated harm, parents are within their rights to file a personal injury or civil dispute against the school district or other parties involved. When repeated harm prevents a child with disabilities from accessing their education, those actions can be considered "disability harassment." Federal civil rights laws, including the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, can be used to protect the educational rights of the impacted child through legal action.

Cases, however, can be quickly compromised if parents overstep the legal rights of other students instead of working directly with an attorney to investigate and collect evidence through proper channels. For example, a school district can file criminal charges against a parent of a child who is being bul-

lied for recording children without their knowledge and the consent of a parent or guardian.

### **Conclusion**

The niche area of special education rights requires an extensive understanding of specific legal nuances and how actions taken by parents, attorneys, and courts can severely impact a child's access to education. Every situation surrounding children with disabilities is unique, and there are multiple options available to families looking to hold school districts accountable and help their children receive the services they are not only entitled to but also need. Legal professionals who handle family law matters and other claims that involve children with disabilities must possess an understanding of special education law and its application in legal situations that involve those children, such as divorce and school bullying. Building a network of attorneys who specialize in education rights creates more opportunities for success for attorneys, parents, and children alike.

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