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Resources for Special Education Advocacy

By Virginia A. Neisler

The CDC reports that approximately 1 in 6 children in the United States has a developmental disability.¹ Certain types of developmental disabilities are becoming rapidly more prevalent, with autism spectrum disorder affecting 1 in 59 children in 2014 (as compared to 1 in 150 as recently as 2002).² From 1997 to 2008, all incidences of developmental disabilities in children in the United States increased in prevalence by more than 17 percent.³ This represents a significant part of our population and in recent decades has given rise to a complex system of legal rights and protections for developmentally disabled children that attorneys may need to navigate. Among these rights is access to public education for children with developmental disabilities, which is the focus of this article.

Federal law

There is no federal constitutional provision creating a right to education from the state, and before the 1970s, many states excluded or discriminated against developmentally disabled children in their education systems.⁴ A series of federal cases and laws in the early 1970s changed that. Federal courts held that states were required to provide an education for disabled children⁵ and that placement in or removal from a special education program without a fair hearing violated due process.⁶ A federal court held that Michigan law required all educators to provide education to students with disabilities, noting in dicta that providing education to one group of students but not another would be a denial of equal protection under the law.⁷

Congress also took a series of actions to prevent discrimination against disabled children. Section 504 of the Vocational Rehabilitation Act (1973) prohibited any institution

receiving federal funds from discriminating against the handicapped.⁸ Passed in 1975, the Education for All Handicapped Children Act was another major federal attempt to ensure that developmentally disabled students were educated without discrimination.⁹ Amended many times and eventually renamed, the act is now known as the Individuals with Disabilities Education Act.¹⁰ It mandates that all children must receive a free appropriate public education in the least restrictive environment, and uses an individualized education program specific to each child as an instrument to accomplish this goal.¹¹

Michigan law

Like every other state, Michigan has passed laws and regulations with similar goals in mind. The Michigan Supreme Court found that the duties and rights imposed by these laws are state-mandated activities or services within the meaning of the Michigan Constitution.¹² Article 3 of the Michigan School Code lays out the basic responsibilities of state and local actors.¹³ However, the Michigan Department of Education's Administrative Rules for Special Education contain more detail about the specific processes in place in the state.¹⁴

While these are the major sources of law in special education, they are by no means the only ones an attorney may encounter. The following resources provide more in-depth guidance on this complex subject.

Resources

In Michigan, there are several resources available to parents, educators, and attorneys alike. Some are freely available online, while others are available for purchase or via subscription.

Free

- **Laws and Regulations, Michigan Department of Education** <https://www.michigan.gov/mde/0,4615,7-140-6598_88184---,00.html> [<https://perma.cc/LZM2-9VYE>]

In an attempt to lay out the framework in which it operates, the Michigan Department of Education created a website providing relevant law and policy. Materials are provided at federal and state levels, including access to the Michigan Special Education Reference research tool, which allows users to search within all major state and federal laws and policies.

- **Barve, *Special Education Advocacy: A Guide for Attorneys, Child Law Practice Today, Center on Children and the Law, ABA (December 1, 2017)*** <https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practice_online/child_law_practice/vol-36/nov-dec-2017/special-education-advocacy--a-guide-for-attorneys/> [<https://perma.cc/P9AB-MWKP>]

For attorneys who are completely new to this area of law, the American Bar Association's Center on Children and the Law published this brief article on special education advocacy. It touches on issues arising in advocacy, including access to records, identifying and evaluating children who may need special educational services, and potential interactions with the court system.

- ***Special Education: An Advocate's Manual, Michigan Protection & Advocacy Service, Inc. (MPAS) (October 2017)*** <<https://mpas.org/resources/special-education-manual>> [<https://perma.cc/8RLU-A8UA>]

MPAS is “the independent, private, non-profit organization designated by the governor of the State of Michigan to advocate and protect the legal rights of people with disabilities in Michigan.”¹⁵ Its manual provides samples and forms, tips for client advocacy, and detailed information about state and federal laws governing special education in Michigan. It is freely available on the MPAS website, and hard copies may be purchased for a fee.

Purchase or subscription

- **Murphy and Hirschel, eds., *Advising Clients on Elder and Disability Law* (Ann Arbor: ICLE, 2018), ch 18, available for purchase at <<https://www.icle.org>>**

This ICLE resource is available as an e-book or loose-leaf service. Chapter 18, “Access to Education for Students with Disabilities,” provides readers with a practical overview of special education in Michigan. A summary of relevant laws is followed by sections on the essentials of eligibility, services and supports, disputes, and discipline. The chapter also addresses harassment and bullying as well as rules that apply in private or charter schools.

- **Milholland et al, *On-Demand Seminar: Individualized Educational Plan (IEP) Advocacy*, ICLE (September 20, 2016), available for purchase at <<https://www.icle.org>>**

This webinar from three Michigan attorneys focuses on the attorney’s role in the IEP process, from information gathering to advocacy. The website also includes a set of downloadable resources, including an IEP model form.

- ***Special Ed Connection, LRP Publications* <<http://www.specialedconnection.com>>**

This fee-based database contains state and federal laws, regulations, and guidance, but adds a rich suite of practical tools as well. It contains checklists, forms, sample letters, notices, and a topical index for finding relevant materials. It also contains invaluable state material for

Michigan, including judicial and administrative rulings. Special Ed Connection is well worth considering for attorneys wishing to expand their practice in special education advocacy. ■



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ENDNOTES

1. Boyle et al, *Key Findings: Trends in the Prevalence of Developmental Disabilities in US Children, 1997–2008*, Centers for Disease Control and Prevention (2011), available at <<https://www.cdc.gov/ncbddd/developmentaldisabilities/features/birthdefects-dd-keyfindings.html>> [<https://perma.cc/JV4J-MCEVW>]. All websites cited in this article were accessed October 2, 2019.
2. *Data & Statistics on Autism Spectrum Disorder*, Centers for Disease Control and Prevention (September 3, 2019) <<https://www.cdc.gov/ncbddd/autism/data.html>> [<https://perma.cc/8ZTK-XQFR>].
3. *Trends in the Prevalence of Developmental Disabilities*.
4. McWilliams, “Access to Education for Students with Disabilities,” in *Advising Clients on Elder and Disability Law*, Murphy & Hirschel, eds (Ann Arbor: ICLE, 2018), ch 18.
5. *Pennsylvania Ass’n for Retarded Children v Pennsylvania*, 334 F Supp 1257 (ED Pa, 1971).
6. *Mills v Board of Educ*, 348 F Supp 866 (D DC, 1972).
7. *Harrison v State of Michigan*, 350 F Supp 846 (ED Mich, 1972).
8. 29 USC 794.
9. 20 USC 1400 *et seq*.
10. 20 USC 1400(a).
11. 20 USC 1412.
12. *Durant v State*, 456 Mich 175, 191; 566 NW2d 272 (1997).
13. MCL 380.1701 through MCL 380.1766.
14. Mich Admin Code, R 340.1701 through Mich Admin Code, R 340.1862.
15. *About Michigan Protection & Advocacy Service, Inc., MPAS* <<https://www.mpas.org/about-mpas>> [<https://perma.cc/CE72-P4R4>].