

# School Law for the Child Psychiatrist: Legal Principles and Case Implications

Colby Brunt, JD<sup>a</sup>, Jeffrey Q. Bostic, MD, EdD<sup>b,c,\*</sup>

## KEYWORDS

- School
- Mental health
- Legal
- School law psychiatry
- Special education

As our society becomes more sophisticated, so too do the rules by which we live. Schools struggle with shifting social rules and legal interpretations of what best provides students opportunities while protecting everyone else in the school. Mental health has become a significant topic within schools, because promoting positive mental health, and providing accommodations to those students impacted by an illness—physical or mental—is evolving at an unparalleled pace. Challenges abound around educationally planning for an increasing number of students who have been diagnosed with a psychiatric disorder. Practical issues vary widely among local districts regarding how schools, parents, and clinicians collaborate when a student has, for example, been hospitalized and attempts to return to school, when a student refuses to go to school, or when students require additional supports and services to succeed educationally.

The laws impacting education continue to evolve and to be interpreted differently across the country. At the same time, core tenets and principles appear somewhat consistent across American schools, and clinicians should be familiar with these to best work with schools and to advocate effectively for their patients. This article reviews the current educational law most pertinent to clinicians, and how these principles are applicable in given cases.

## FEDERAL LAWS GOVERNING SPECIAL EDUCATION

### *Individuals with Disabilities Act*

In accordance with the federal law regarding special education, the Individuals with Disabilities Education Act (IDEA),<sup>1</sup> a student is found eligible for special education services if a team of individuals (parents, teachers, school staff, and administrators)

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<sup>a</sup> Stoneman, Chandler, & Miller LLP

<sup>b</sup> Department of Psychiatry, Harvard Medical School, 6900 Yawkey Building, 55 Fruit Street, Boston, MA 02114, USA

<sup>c</sup> School Psychiatry, Massachusetts General Hospital, Boston, MA, USA

\* Corresponding author.

E-mail address: [jbostic@partners.org](mailto:jbostic@partners.org)

find that the student has a disability; is currently not making effective progress in the general education curriculum; and requires special education services to make effective progress in the general education curriculum. Once a student is eligible for special education services, the school district is charged with providing the student a free, appropriate public education (FAPE). Case law defines FAPE as services that provide the student with an educational benefit that enables them to make effective progress toward the general education curriculum.<sup>2</sup> The key issue is that it must enable the student to make effective progress and this may not necessarily be the “best” or most optimal educational program conceivable for the student.

Although eligibility determination seems to be a rather simple set of questions, as with many areas of the law, the legal requirements for schools involving students with mental health issues readily becomes gray. A student may indeed have a disability (such as a serious emotional disturbance [SED]) or the student may not be making progress (perhaps the student has been hospitalized or has been unable to come to school), but the issue that many educational teams face is what special education services the student require to make effective progress. The distinction between educational services and medical services is significant, because clinical needs may require clinical interventions that represent medical services (eg, access to medications when agitated) rather than special education services. For many students, outside medical providers might recommend clinical approaches such as psychiatric interventions or other intensive therapeutic supports. However, case law does not support that a clinical intervention model is something that is necessarily within the purview of schools to provide to students. So the question becomes, where does the school’s obligation begin and end for these students?

Under special education law, the range of educational placements and related services vary greatly for students whose primary educational disability is social and/or emotional. For some students, they may require a therapeutic public or private (out-of-district) day placement or a residential placement (24-hour per day school placement) to receive FAPE. First, the educational team must provide an educational plan individualized for a student’s needs, and construct an Individualized Educational Program (IEP). Next, the law remains clear that students are to receive the educational services described in the IEP in the “least restrictive setting.” Although a residential setting might be the optimal setting for a student, if FAPE can be provided in a day school placement or in a program within the public school, then these less restrictive settings are favored over the more restrictive setting.

In some instances, the team may determine that the student’s educational needs are so great that the student can only be served within a residential placement because the student requires 24-hour per day intervention by trained educational staff. Others may require a day placement in a public or private day school that provides the student with a smaller classroom with therapeutic supports throughout the day. Still other students may be able to remain in the public schools with on-site services and supports. For some students, counseling services may be necessary for the student to benefit from his or her educational programming. Usually, such counseling is provided for the student to access the curriculum, rather than to address psychiatric symptoms per se (provide mental health treatment). For example, if a student becomes distraught when math problems become overwhelming, and the student “shuts down” or becomes hostile, that usually falls within the purview of the school; however, if a student reports being persistently suicidal across all settings, that is not recognized as a school issue, but instead a medical issue.<sup>3</sup> Typically, schools have a school adjustment counselor or school psychologist work with the student in a 1:1 setting

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