PREFACE

Federal laws mandating the provision of special education and related services to students with disabilities have been in effect since 1975. To understand the field of special education, it is essential that we be familiar with the history and development of these laws. Because special education has become a highly litigated area, it is important that special education teachers, administrators, and associated staff know the requirements of these laws. Moreover, the laws are in a constant state of development and refinement; therefore, we need to be able to locate the necessary information to keep abreast of these changes. Thus, the purpose of this text is threefold: (a) to acquaint readers with the legal development of special education, (b) to expose readers to the current legal requirements in providing a free appropriate public education to students with disabilities, and (c) to assist readers in understanding the procedures involved in obtaining legal information in law libraries and on the Internet and to guide them in conducting legal research using a variety of sources.

NEW TO THIS EDITION

The fourth edition retains the same structure but updates and adds content. Additionally, this edition contains the following new information:

• A new blog is being started to keep readers updated in developments in special education law. The URL of the blog is http://spedlawblog.com.
• In this edition a section on bullying of students with disabilities has been added to Chapter 14, Additional Issues.
• Many chapters in this edition include a new section titled “Lessons from Legislation and Litigation.” The purpose of the section is to help administrators and teachers avoid mistakes in special education programming.
• This edition of the textbook includes a number of new flowcharts to guide administrators and teachers in developing educationally appropriate and legally sound special education programs.
• This edition includes information on State Performance Plans and Annual Performance Reports.
• This edition of the textbook includes over 50 hyperlinks that will take readers to important cases, legislation, litigation, administrative guidance, and associated websites.
• Chapters in this edition begin with a list of learner objectives to guide instruction.
• The textbook includes approximately 100 new cases, administrative decisions, and administrative guidance documents.
• This edition also includes links to videos that prompt critical thinking and reflection.

This textbook is written in the style of an educational textbook rather than a legal textbook. That is, rather than including passages from selected cases, legal principles from these cases will be presented. However, exposure to the written opinions is important, and readers are urged to locate and read them in a law library or on the Internet. Readers should note the wealth of materials on the Internet described in Chapter 2. For ease of use, references are presented in accordance with the format described in the Publication Manual of the American Psychological Association (Sixth Edition) rather than in the standard legal format. Finally, legal terms are kept to a minimum, explained when used, and defined in the glossary.

A unique feature of this textbook is a homepage on the World Wide Web, titled The Law and Special Education. It contains links to the text of the Individuals with Disabilities Education Act (IDEA), the Individuals with Disabilities Education Improvement Act (IDEIA) of 2004, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), the Elementary and Secondary Education Act (ESEA), the Family Educational Rights and Privacy Act (FERPA), and the corresponding regulations. Links to legal resources on the Internet are included on the
page. The website also features a Special Education Law blog, which is also available at http://spedlawblog.com. The primary purpose of the blog is to provide readers and instructors using the text with frequent updates regarding legal developments in special education. The URL of The Law and Special Education homepage is www.ed.sc.edu/spedlaw/lawpage.htm.

ACKNOWLEDGMENTS

In writing this book I benefited from the help of many friends and colleagues. Thanks go to all of them. Terrye Conroy, the law librarian at the University of South Carolina, did a fabulous job in co-writing Chapters 1 and 2. David Rogers and Elisabeth Lodge Rogers, Director of special services, intermediate district #287, Plymouth, MN, did great work in Chapter 4. Thanks also to the reviewers of this text for their timely and helpful reviews: Todd Sundeen, University of Northern Colorado; Stephen D. Kroeger, University of Cincinnati; Jean Gonsier-Gerdin, California State University, Sacramento; Alycia Maurer, University of Texas San Antonio; and Diane Lawrence Lowry, University of Mississippi. This is a better textbook because of their efforts. A hearty thank you goes to Joseph Cross of the University of South Carolina law library, who was extremely helpful, and Delys Nast, who generously contributed her considerable talents in designing the webpage. A special thank you goes to Ken Heinlein of the University of Wyoming for his insightful editorial comments. Thanks also to Erik Drasgow and Bill Brown of the University of South Carolina for their helpful editorial feedback, and Antonis Katsiyannis of Clemson University and the many readers who made useful suggestions for this edition. I would also like to thank Ann Davis and Steve Dragin of Pearson Education, who have guided me through this endeavor with enormous skill, patience, and sound advice. Thanks also go to the giants on whose shoulders I perched, Frank Wood and Stan Deno of the University of Minnesota. Thank you to Barbara Bateman whose writing and work has been an inspiration to me. Finally, I want to thank my wife, Joy, and our three sons, Nick, Eric, and Alex, for their love and our lives together.
Introduction to the American Legal System

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[Laws are] rules of civil conduct prescribed by the state . . . commanding what is right and prohibiting what is wrong.  
BLACKSTONE (1748)

LEARNER OBJECTIVES

At the end of the chapter, students will be able to

1. Describe federalism and how it underlies our system of laws.
2. Describe the four sources of law: constitutional law, statutory law, regulatory law, and case law.
3. Describe how law is created in the federal system.
4. Describe the hierarchy of the federal court system.
5. Describe precedence and its importance in the court system.
6. Describe the parts of a judicial opinion.
7. Describe the evolution of special education law.

Laws ensuring the provision of special education to students with disabilities are based on constitutional principles, written and enacted by legislatures, enforced by administrative agencies, and interpreted by the courts. It is through the interaction of the various components of the legal system, legislative and judicial, that special education law evolves. The purpose of this chapter is to examine the workings of the American legal system.

THE AMERICAN LEGAL SYSTEM

Federalism

The American system is a federal system. That is, the government of the United States is composed of a union of states joined under a central federal government. Federalism represents the linkage of the American people and the communities in which they live through a unique political arrangement. The federal government protects the people’s rights and liberties and acts to achieve certain ends for the common good while simultaneously sharing authority and power with the states (Elazar, 1984). The U.S. Constitution delineates the nature of this arrangement in the 10th Amendment (see Appendix B for selected provisions of the U.S. Constitution) by limiting excessive concentration of power in the national government while simultaneously limiting full dispersal of power to the states. The national government, therefore, has specific powers granted
to it in the Constitution; those powers not granted to the national government are the province of the states.

The Constitution does not contain any provisions regarding education. According to Alexander and Alexander (2012), this is not because the nation’s founders had no strong beliefs regarding education. Rather, they believed the states should be sovereign in matters as important as education. Education, therefore, is governed by the laws of the 50 states.

Nevertheless, federal involvement has been an important factor in the progress and growth of education. The government’s role provided under the authority given Congress by the Constitution’s general welfare clause (Article I, Section 8) has, however, been indirect. In the earliest method of indirect federal involvement in education, the federal government made grants of land to the states for the purpose of creating and aiding the development of public schools. In addition to the federal land grants creating public schools, Congress in the Morrill Act of 1862 provided grants of land to each state to be used for colleges. In the land grants, the federal government had no direct control of education in the public schools or colleges.

The federal government has continued to indirectly assist states with education through categorical grants. The purposes of the categorical grants have been to provide supplementary assistance to the state systems of education and to shape educational policy in the states. States have the option of accepting or rejecting the categorical grants offered by the federal government. If states accept the categorical grants, they must abide by the federal guidelines for the use of these funds. Examples of categorical grants include the National Defense Education Act of 1958, the Higher Education Facilities Act of 1963, the Vocational Education Act of 1963, the Elementary and Secondary Education Act of 1965, and the Education for All Handicapped Children Act of 1975 (now the Individuals with Disabilities Education Act). The role of the federal government in guiding educational policy has increased greatly through the categorical grants (Alexander & Alexander, 2012).

Sources of Law

There are four sources of law: constitutional law, statutory law, regulatory law, and case law. These sources exist on both the federal and state level. The supreme laws are contained in federal and state constitutions (i.e., constitutional law), and these constitutions empower legislatures to create law (i.e., statutory law). Legislatures in turn delegate lawmaking authority to regulatory agencies to create regulations that implement the law (i.e., regulatory law). Finally, courts interpret laws through cases, and these interpretations of law accumulate to form case law. Figure 1.1 illustrates the sources of law.

CONSTITUTIONAL LAW

The U.S. Constitution is the basic source of law in our legal system. The Constitution (a) defines the fundamental rules by which the American system functions, (b) sets the parameters for governmental action, and (c) allocates power and responsibility among the legislative, executive, and judicial branches of government (Berring & Edinger, 2005). The Constitution further defines the separation of powers between the legislative, executive, and judicial branches. Figure 1.2 illustrates the branches of government and their powers as created by the Constitution.

Provisions in the U.S. Constitution authorize federal statutes. The specific section of the Constitution that is the basis for special education laws (e.g., the Individuals with Disabilities
The Education Act and Section 504 of the Rehabilitation Act of 1973) is the provision that allows spending money to provide for the general welfare (Article 1, Section 8).

The Constitution can be amended by Congress and the states. Thus far, the Constitution has been amended only 27 times. The first 10 amendments, known as the Bill of Rights, describe the basic rights of individuals. The 14th Amendment is important because it has become the constitutional basis for special education. This amendment holds that no state can deny equal protection of the law to any person within its jurisdiction. Essentially, the equal protection clause requires states to treat all similarly situated persons alike (Alexander & Alexander, 2012). The 14th Amendment also states that persons may not be deprived of life, liberty, or property without due process of law. This amendment has played an important role in the right-to-education cases that will be explained in Chapter 3.

STATE CONSTITUTIONS All 50 states have their own state constitutions. Like the U.S. Constitution, state constitutions establish the principle of separation of powers by establishing a lawmaking body (legislature), a chief executive officer (governor), and a court system. State constitutions tend to be more detailed than the federal Constitution. Often they address the day-to-day operations of the state government in addition to ensuring the rights of the state’s citizens (Berring & Edinger, 2005). States cannot deny persons the rights found in the U.S. Constitution, but they can provide additional rights not found in the federal document. That is, they can provide more rights, but they cannot provide fewer.

There is no constitutional mandate regarding the provision of education by the federal government and, therefore, no constitutional right to an education afforded by the U.S. Constitution. The states thus have the authority to mandate the provision of an education for their citizens. All states have educational mandates in their constitutions.

STATUTORY LAW The U.S. Constitution gives Congress the authority to make laws. The laws passed or enacted by Congress and state legislatures are referred to as statutes. The process of enacting laws is long and complicated. In Congress the formal process begins with the introduction of a bill by a senator or representative. The bill is assigned a number that reflects where it originated (House or Senate) and the order of introduction. The bill is then referred to the appropriate House or Senate committee. Most bills never pass this stage; some bills merely die, while some pass one house but not the other. If a bill passes both the House and the Senate but in different forms, a conference committee comprising House members and senators is appointed to develop a compromise bill. The compromise bill is then voted on again. If both the House and the Senate initially pass the same bill, the conference committee is bypassed. The final version of the bill is sent to the president, who either signs or vetoes it. The House and Senate can override the veto with a two-thirds vote in each house. USA.gov has a frequently asked questions page on how federal laws are made. Figure 1.3 illustrates this process.

The enacted law (also called an act), if intended to apply generally, is designated as a public law (P.L.). In addition to the name given to the law (e.g., the Individuals with Disabilities Education Act, the No Child Left Behind Act), the law is also given a number. The number reflects the number of the Congress in which it was passed and the number assigned to the bill. For example, P.L. 94-142, the public law number of the Education for All Handicapped Children Act, means that this public law was the 142nd law passed by the 94th Congress. Federal laws are published chronologically at the end of each congressional session (referred to as session laws) in the United States Statutes at Large. They are then arranged by subject (codified) into 51 titles.
that comprise the *United States Code*. For example, Public Law 94-142 (the Education for All Handicapped Children Act) was published in volume 89 beginning on page 773 of the *United States Statutes at Large* (89 Stat. 773). It was codified (as amended by subsequent acts) in Title 20 (Education) of the *United States Code* (20 U.S.C. § 1400 et seq.). *Et seq.* is an abbreviation for the Latin term *et sequentes*, meaning “and the following.”

State statutes or laws may have different designations or names, but they are created and enacted in a manner similar to that of federal statutes. For the most part, bills are introduced and passed by state legislative bodies and published chronologically as session laws before being arranged by subject (codified) (Barkan, Mersky, & Dunn, 2009). Most statutes concerning matters of education are state rather than federal laws.

**REGULATORY LAW** When Congress passes a law, it cannot possibly anticipate the many situations that may arise under that law (Berring & Edinger, 2005). Moreover, members of Congress do not have expertise in all areas covered by the laws they pass. The statutes passed by Congress, therefore, tend to be broad and general in nature. To fill in the details of the law, Congress delegates power to the appropriate administrative agencies to create specific regulations to implement the laws. These agencies are part of the executive branch of government. The regulations, also called *rules*, that they create supply specifics to the general content of the law and provide procedures by which the law can be enforced. For instance, many of the procedural safeguards contained in the regulations implementing the Individuals with Disabilities Education Act are codified in Title 34 Part 300 of the *Code of Federal Regulations* (34 C.F.R. pt. 300 (2013)). Regulations have the force of law. A violation of a regulation, therefore, is as serious as a violation of the law.

In addition to promulgating regulations, most administrative agencies have a quasi-judicial function, which means they can make rulings regarding compliance with their regulations. These judgments may take the form of formal hearings or rulings on written inquiries. The U.S. Department of Education is a cabinet-level agency in the executive branch of the U.S. government. The agencies within the Department of Education that often rule on special education matters are the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Special Education Programs (OSEP). The Office of Civil Rights (OCR) of the Department of Education investigates and issues findings on claims of violation of Section 504 of the Rehabilitation Act, and therefore often investigates matters relating to special education.
Agencies in the federal government occasionally issue public letters that interpret laws. These letters, which are often referred to as “Dear Colleague Letters” (DCLs), provide guidance on meeting obligations under the law. The U.S. Department of Education has issued many DCLs that have provided guidance in a number of areas. Letters that address the IDEA are issued by OSEP, and OCR issues letters that interpret Section 504. When federal agencies send DCLs they do not create law; neither do DCLs add requirements to existing law; rather, DCLs inform recipients about how OCR will evaluate compliance to legal obligations under the law by covered entities. In later chapters we will occasionally address DCLs that have been issued by OSEP and OCR.

CASE LAW  
Case law refers to the published opinions of judges that arise from court cases where they often interpret statutes, regulations, and constitutional provisions. This aggregate of published opinions forms a body of jurisprudence distinct from statutes and regulations (Garner, 2014). The American legal system relies heavily on the value of these decisions and the legal precedents they establish.

The American emphasis on case law comes to us from the English tradition known as common law. English common law was developed as a set of customs, rules, and traditions that were handed down through generations and reflected in the reports of decisions of the courts. Once a legal principle or precedent was established, it would be applied to cases with similar facts by subsequent courts. This process of following precedent is based upon the doctrine of stare decisis, a Latin phrase meaning, “to stand by things decided” (Garner, 2014).

Over time, legislation has become more important in our common law system, with most judicial opinions today interpreting statutes or administrative regulations. Legislation has been used to create new areas of law, fill gaps in the common law, and change laws established by the courts. However, the American judicial system continues to have great precedential power (Barkan et al., 2009; Berring & Edinger, 2005).

Sources of Judicial Power

To understand the role of case law in the American legal system, it is necessary to become familiar with the sources of judicial power. Judicial power emanates from two sources; the first has been referred to as horizontal, the second vertical (Reynolds, 2003).

HORIZONTAL POWER  
There are essentially two types of horizontal power (Reynolds, 2003). The first is supreme power. In some areas of decision making, the power of the judiciary is virtually supreme. This is when the courts, especially the U.S. Supreme Court, act as the ultimate interpreter of the Constitution. The second type of horizontal power is limited power. Virtually all judicial decisions involve the interpretation of the laws of the legislative branch. The power is limited because the legislature has the final say as to the content of the law. If the legislature disagrees with a court’s interpretation, it can change or alter the law or write another law. Figure 1.4 represents the horizontal power of the courts.

![Figure 1.4 The Horizontal Power of the Courts](image-url)
An example of horizontal power is the passage of the Handicapped Children’s Protection Act (1986) following the Supreme Court’s decision in Smith v. Robinson (1984). The Education for All Handicapped Children Act (EAHCA) originally contained no mention of parents being able to collect attorney’s fees if they sued schools to obtain what they believed to be their rights under the law. Undaunted by this problem, attorneys for parents sued school districts for these rights and also brought suit under other federal statutes to collect attorney’s fees. In 1984, however, the U.S. Supreme Court held that because the EAHCA did not contain a provision for attorney’s fees, fees were not available. In his dissent, Justice Brennan argued that parents should not be required to pay when they had to go to court to obtain the rights given to them in the law. He further suggested that Congress revisit the issue and write attorney’s fees into the law. Congress did, and in 1986 passed the Handicapped Children’s Protection Act (IDEA 20 U.S.C. § 1415(i) (3)(B)(I)), which made possible the award of attorney’s fees under the EAHCA and overturned Smith v. Robinson.

**VERTICAL POWER** The vertical power of the courts lies in the hierarchical nature of the system. The hierarchy in most jurisdictions consists of a trial court, an intermediate appellate court, and a court of last resort. The vertical power of the courts is illustrated in Figure 1.5.

The first level of courts is the trial court level. Within the federal system, the trial courts are called district courts. The role of the trial court is essentially fact-finding. Litigants (i.e., participants in a lawsuit) may appeal the decision of the trial court to the next highest level of court, the intermediate appellate court. The decision of an intermediate appellate court is binding on all trial courts in its jurisdiction. The next level of appeal is to the court of last resort, which is called the Supreme Court in most states and on the federal level. Decisions of a court of last resort are binding on all lower courts, trial and appellate.

There are 51 separate jurisdictions in the United States: the federal courts and the 50 state courts. While the names of the courts may differ, the equivalent of the generic system described previously can be found in all 51 systems. A line of authority exists within the system, such that the inferior courts are expected to follow the decisions of courts superior to them. This line of authority is within a jurisdiction but does not cross jurisdictional lines. Therefore, a trial court in a certain jurisdiction is not obligated to follow the ruling of an appellate court in another jurisdiction. For example, a trial court in Minnesota is not obligated to adhere to an appellate court’s ruling that is authority in South Carolina. A trial court in South Carolina, however, is obligated to follow a ruling of the appellate court with authority in South Carolina. Because lines of authority run only within a jurisdiction, it is important to know in which jurisdiction a particular decision occurs.

**Court Structure**

The generic model of the hierarchy of courts applies to both the federal system and the state jurisdictions. Figure 1.6 illustrates the generic model when applied to the federal judicial system.

In some states, the number of levels varies slightly, although the model is essentially the same. Questions involving state law are brought before the state courts, and questions involving federal law and the U.S. Constitution are usually brought before the federal courts. Most special education cases have been heard in the federal court system because most have concerned the
application of federal law (e.g., the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act). The administrative office of the U.S. courts maintains a website that explains the federal court system.

**TRIAL COURT** The trial court is the first level in the court system, the level at which the fact-finding process takes place. A judge or jury hears matters of dispute, and the issues of fact are determined. When the facts have been determined, they remain constant. This means that if the case goes to the appellate court or the court of last resort, the facts as determined by the trial court do not change, unless a higher court finds a procedural problem or bias in the fact-finding process. The facts of the case, once determined, cannot be appealed.

In addition to the facts of the case, issues of law arise at the trial court level. The judge makes determinations concerning the issues of law and applies them to the facts of the case. The rulings of the judge on the law, however, can be appealed to a higher court.

There are close to 100 trial courts in the federal judicial system. The federal trial courts are called U.S. District Courts. The geographic distribution of the district courts is based on state boundaries, with all states having between one and four district courts. All judicial districts have at least one and as many as three judges to share the federal district court caseload.

The role of the federal district court differs slightly in special education cases. Because the fact-finding process takes place during the administrative review process (i.e., the due process hearing or hearing by the state educational agency), the trial court takes on more of an appellate role and determines if the administrative agency or due process hearing officer correctly applied the law.

**INTERMEDIATE APPELLATE COURT** Usually litigants have the right to appeal the trial court decision to the intermediate appellate court in that jurisdiction. In an appeal, the appellate court reviews the decision of the trial court on the issues of law. The role of the appellate court is to ensure that the trial court did not err and to guide and develop the law within the jurisdiction (Reynolds, 2003). The appellate court determines whether the trial court’s judgment should be affirmed, reversed, or modified. If the appellate court concludes that the lower court did not properly apply the law, the court may reverse the trial court’s decision. If the appellate court determines that the law was not applied properly, but that the error was of a minor nature and did not affect the outcome, it may affirm the decision. Decisions of the appellate court develop law through the creation of precedents.

Because the facts are determined at the trial court level, the appellate court does not retry the case. The facts as determined by the trial court, therefore, are accepted by the appellate court. The primary concern of the appellate court is whether the trial court applied the principles of law correctly.

There is no jury at the appellate level, only the judges or justices. Typically, the attorneys for each party exchange written briefs. Oral arguments may also be heard. An appellate court will usually consist of three or more judges who will then vote on the disposition of the dispute.

Each federal appellate court is composed of 12 judges, but typically cases will be heard by only 3 judges. By dividing judges in this manner, the courts can hear more cases. Occasionally all of the judges on the appellate court will hear a case. A hearing by the full court is referred to as *en banc*, or “on the bench” (Garner, 2014). When an opinion is issued by an appellate court without designating the particular judge who wrote it, it is called a *per curiam* opinion (Garner, 2014).
There are 13 U.S. Courts of Appeals in the federal court system. The First Circuit through the Eleventh Circuit cover three or more states each, a Twelfth Circuit covers the District of Columbia, and a Thirteenth Circuit, called the Federal Circuit, hears appeals from throughout the country on specialized matters (e.g., patents and international trade). The courts of appeal hear cases from trial courts in their respective jurisdictions where their decisions become binding authority.\footnote{The U.S. Court of Appeals for the Eleventh Circuit was created in 1981 by taking Florida, Georgia, and Mississippi from the Fifth Circuit. Because there was no case law prior to that date, no controlling authority to guide court decisions (except decisions of the U.S. Supreme Court) was available in the Eleventh Circuit. To remedy this problem, in the first case heard before the Eleventh Circuit Court, \textit{Bonner v. Alabama} (1981), an en banc court ruled that all decisions of the U.S. Court of Appeals for the Fifth Circuit decided prior to September 30, 1981, would be controlling in the Eleventh Circuit.}

Figure 1.7 shows the geographic jurisdictions of the federal appellate courts.

**COURT OF LAST RESORT** Litigants may file an appeal with the court of last resort. The court of last resort is called the Supreme Court in most jurisdictions. Because the courts of last resort are extremely busy, they cannot hear every case that is appealed. The courts therefore have the power to determine which cases they will hear.

The court of last resort reviews the decision of the intermediate appellate court to determine if the law has been correctly applied. As with the intermediate appellate court, the court of last resort is not a forum for retrying the case. The decision of the court of last resort will be binding on all lower courts (trial and appellate) in its jurisdiction. The decisions of a court of last resort are thus important sources of law.

The U.S. Supreme Court is the highest court in the land. The Court has nine Justices, one designated as the Chief Justice. If a litigant decides to appeal a decision of an appellate court to the Supreme Court, the litigant files a petition for a writ of \textit{certiorari}, usually called a \textit{petition for cert}. This petition for cert essentially asks the Court to consider the case. The Justices review the petitions, and if four of the nine Justices decide to grant the petition, a writ of certiorari will be issued and the case will be heard. This is usually referred to as \textit{granting cert}. If the Court decides not to hear the case, it will deny cert. When the Court denies cert, it does not have to explain why it is doing so. Because a denial can be for any of a number of reasons, it has no precedential
value. If the high court denies cert, the lower court decision stands and may still exert controlling and persuasive authority.

The U.S. Supreme Court grants cert to only a small number of cases, less than 1%. Cases that the Court hears present important questions of constitutional or federal law and often involve issues that have split the appellate courts. In the latter case the Supreme Court acts to resolve the conflict. The U.S. Supreme Court has resolved several conflicts among the federal circuits since the Education for All Handicapped Children Act (now the Individuals with Disabilities Education Act) was passed in 1975.

**Precedent**

The American system of law follows the doctrine of stare decisis. According to stare decisis, also referred to as precedent, courts are expected to follow the decisions of courts in similar cases. When a higher court applies the law to a specific set of facts, its decision controls decisions in similar cases within its jurisdiction. If the court does not follow the precedent, it must explain why that precedent does not apply or control in the particular case. Courts are not absolutely locked to every precedent, however, and can abandon earlier doctrines that are no longer useful (Valente & Valente, 2005). This doctrine helps to ensure efficiency, predictability, and uniformity or fairness in court decisions (Reynolds, 2003).

A decision by a higher court controls the disposition of lower courts in the same jurisdiction. The lower court cannot make a decision contrary to decisions by the higher court. This is referred to as controlling authority. The decision of the court of last resort, typically the Supreme Court, in a jurisdiction controls the decisions of all lower courts (Reynolds, 2003). The U.S. Supreme Court is the highest authority in the United States on questions of constitutional or federal law (Barkan et al., 2009).

Another type of authority may come from a court that is not controlling (e.g., a court in a different jurisdiction). This type of authority is called persuasive authority. A court is not bound to follow the precedent but does so because it is persuaded by the decision (Reynolds, 2003). For example, the decision of an appellate court in Minnesota will not control the decision of a court (even a lower court) in South Carolina, because they are in different jurisdictions. The court in South Carolina may find the decision in the Minnesota court to be persuasive, however, and use similar reasoning in arriving at its decision. An example of a special education ruling that has been extremely persuasive is the decision of the U.S. Court of Appeals for the Fifth Circuit in *Daniel R.R. v. State Board of Education* (1989). The reasoning in the Fifth Circuit’s decision regarding the determination of the least restrictive environment for children in special education has been accepted by the U.S. Courts of Appeals in a number of other circuits (see Chapter 12).

Only published opinions can be argued as establishing precedent. Fewer than half of the opinions issued by the federal courts of appeals are designated for publication (Hilyerd, 2004). All of the written opinions of the U.S. Supreme Court are published.

**Holding and Dicta**

The holding of the case is the portion of the decision that controls decisions of lower courts in the same jurisdiction. The holding of the case is the actual ruling on a point or points of law. Judicial comments, illustrations, speculations, and so on that do not directly relate to the holding in a case are referred to as dicta, the plural form of dictum. Dicta are not controlling but can be persuasive. They do not have value as precedent.

**The Opinion**

One of the judges of the appellate court or court of last resort will usually be appointed to write an opinion stating the ruling of the court and the court’s reasoning for arriving at the decision. A written opinion typically contains a summary of the case, a statement of the facts, an explanation of the court’s reasoning, and a record of the decision. The opinion of the court also lists the author’s name and the names of judges or justices who agree with it (the majority). A court’s opinion may contain a concurring opinion or a dissent. A concurring opinion is written when a judge (or judges) agrees with the majority of the court on the ruling, but does not agree with the
reasoning used to support the ruling. A dissent is a statement of a judge or justice who does not agree with the results reached by the majority.

Dissents can be important. Because dissents are typically circulated among the justices hearing a case prior to writing a final opinion, they can serve to dissuade the majority justices from judicial advocacy, encourage judicial responsibility, and appeal to outside audiences (e.g., Congress) for correction of perceived mistakes by the majority (Reynolds, 2003). They can also serve as general appeals or appeals to higher courts or legislators to correct a perceived judicial error. Although dissents carry no controlling authority, they can be persuasive.

Dissents are sometimes used to appeal to a higher court or legislature to correct the court’s action. An example of the latter is Justice Brennan’s dissent in Smith v. Robinson (1984), discussed earlier. In his dissent, Justice Brennan disagreed with the Supreme Court’s ruling that attorney’s fees were not available in special education cases and appealed to Congress to revisit P.L. 94-142 and correct the Court’s error. Congress did revisit the issue and passed the Handicapped Children’s Protection Act in 1986.

THE LAW AND SPECIAL EDUCATION

The four branches of law—constitutional, legislative, regulatory, and case law—often interact. Laws are sometimes made by one branch of government in response to developments in another branch. This can be seen clearly in the development of special education law.

Actions by the courts, such as Mills v. Board of Education (1972) and Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth of Pennsylvania (1972), recognized the right to a special education for children with disabilities under the 14th Amendment to the Constitution. Congress reacted to this litigation by passing legislation to ensure the educational rights of children with disabilities (P.L. 94-142). Regulations were promulgated to implement and enforce the law by the then Department of Health, Education, and Welfare. In response to the federal law, all 50 states eventually passed state laws and created state regulations ensuring the provision of special education to qualified children. The inevitable disputes that arose concerning the special education rules and regulations led to a flood of federal litigation to interpret the special education law. Some of this litigation, such as Smith v. Robinson (1984), led to more legislation. In Smith v. Robinson, the Supreme Court ruled that attorney’s fees were not available under the EAHCA. Thus, parents who had to hire an attorney and go to court regarding their child’s special education had to bear the cost of their attorney. In 1986, Congress passed new legislation, the Handicapped Children’s Protection Act (HCPA), to overturn the effects of Smith v. Robinson by allowing a student’s parents to collect attorney’s fees when they prevail in a special education lawsuit. This legislation, in turn, has led to more litigation to interpret it. Thus, the development of law is cyclical. Through the interaction of the various sources of law, special education law evolves. This interaction of the sources of law is depicted in Figure 1.8.

![The Evolution of Law](http://www.youtube.com/watch?v=QtFmp3XduaQ)
SUMMARY

An elaborate and extensive body of statutes, regulations, and court decisions governs special education. The U.S. Constitution and the state constitutions provide the foundations for special education. Congress and the state legislatures write statutes or laws that mandate and guide the provision of special education. These laws are implemented through the promulgation of regulations issued by administrative agencies such as the state and federal Departments of Education. Finally, the courts interpret laws and regulations. The role of the courts is to apply the principles of the law to settle disputes. Although the courts do not initiate laws, their published decisions may result in judicially created principles known as case law. Legislation and litigation in special education have rapidly increased in the last decade. The effect of these judicial and legislative actions is that special education continues to evolve.

FOR FURTHER INFORMATION


REFERENCES

Legal Research

Mitchell L. Yell, Ph.D., and Terrye Conroy, J.D., M.L.I.S.
University of South Carolina

The key to becoming a successful legal researcher is to stay abreast of the vast array of available print and online legal resources so that you may learn to apply them effectively to any given situation.

Conroy, T.

LEARNER OBJECTIVES

At the end of the chapter, students will be able to

1. Describe primary sources for legal research.
2. Describe the United States Code (USC) and citations to laws in the code.
3. Describe the Code of Federal Regulations (CFR) and citations to regulations.
4. Describe the federal court system.
5. Describe how cases can be located using case citations.
6. Describe the parts of a judicial opinion.
7. Describe the evolution of special education law.

Legal research is the process of finding laws that govern activities in our society (Cohen & Olson, 2007). It involves finding statutes and regulations and the cases that interpret them. It also involves consulting sources that explain and analyze the particular laws you find. Special education is governed by statutes and regulations at the national and state levels and is among the most frequently litigated areas in education. The result is an extensive body of case law interpreting special education laws and regulations. Through legal research, educators will better understand the principles of special education law, the facts giving rise to these principles, and the application of these principles to various situations they may encounter.

The purpose of this chapter is to describe the legal research process. Legal research requires an understanding of a variety of resources. Legal resources include primary sources, secondary sources, and finding tools. Legal resources differ in their authority. Some are controlling or mandatory, others are persuasive only, and still others are useful tools for finding mandatory and persuasive authorities. We will begin this chapter by explaining the primary sources: statutes, regulations, and cases, and how to find them. Next, we will examine secondary sources that both explain the law and serve as finding tools. We will also discuss legal research using online subscription databases and free Internet sources. We will end by presenting a strategy for conducting legal research.
PRIMARY SOURCES

Primary sources are actual statements of the law. There are three categories of primary source material: statutes or laws passed by either federal or state legislatures and signed into law, regulations promulgated by administrative agencies to implement the statutes, and judicial decisions that interpret the statutes and regulations.

Enormous amounts of primary source materials are issued chronologically rather than by subject. Resources used to locate these primary authorities are referred to as finding tools. Finding tools include indexes, annotated codes, case digests, and citators (discussed throughout this chapter).

Federal Statutes

THE UNITED STATES CODE

Federal statutes are organized by topic and published in a series of volumes called the United States Code (U.S.C.). The 51 numbered titles in the United States Code are divided into chapters and sections. Each title contains the statutes that cover a specific subject. For example, the Individuals with Disabilities Education Act can be found in Title 20 of the United States Code, which contains statutes on education. Section 504 of the Rehabilitation Act of 1973 can be found in Title 29, which contains labor statutes. The Americans with Disabilities Act (ADA) is in Title 42, which contains public health and welfare statutes. Some titles are published in one volume, while others comprise many volumes. A revised edition of the United States Code is issued every six years, with hardbound supplements issued during the interim years. Prepared and published by the Office of the Law Revision Counsel of the U.S. House of Representatives and printed by the U.S. Government Printing Office (GPO), the United States Code is considered the official version of federal statutes. The United States Code is accessible on the website of the Office of Law Revision Counsel of the U.S. House of Representatives and the GPO’s Federal Digital System website, known as FDsys. The United States Code is also available on nongovernmental websites such as Cornell Law School’s Legal Information Institute (LII) and FindLaw’s Cases and Codes. Table 2.1 lists the web addresses for federal statutes.

All Internet versions allow researchers to access the United States Code by citation to a particular title and section; to browse the code by title, chapter, and section; to browse or search the code by popular name; and to search the full text of the code. Both the official print and Internet versions of the United States Code are un-annotated.

ANNOTATED CODES

There are two annotated versions of the United States Code. The first, published by West, a Thomson Reuters business, is the United States Code Annotated (U.S.C.A.); the second is the United States Code Service (U.S.C.S.), published by LexisNexis®. Annotated versions are useful because in addition to the actual text of the United States Code, they contain research references pertaining to each statute. Both the official un-annotated code (U.S.C.) and unofficial annotated versions of the United States Code (U.S.C.A. and U.S.C.S.) include references to each statute’s authority and history as well as cross-references to related statutes.

In addition, the U.S.C.A. and U.S.C.S. provide researchers with references to relevant federal regulations; references to secondary sources such as legal encyclopedias, treatises, and journal articles; and summaries of court decisions that have interpreted each statute. Because

<p>| Table 2.1 Websites for Federal Statutes |</p>
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<thead>
<tr>
<th>Website Names</th>
<th>URL</th>
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<tbody>
<tr>
<td>Congress.gov</td>
<td><a href="https://congress.gov/">https://congress.gov/</a></td>
</tr>
<tr>
<td>Cornell’s Legal Information Institute (LII)</td>
<td><a href="http://www.law.cornell.edu/uscode">http://www.law.cornell.edu/uscode</a></td>
</tr>
<tr>
<td>GPO’s Federal Digital System (FDsys)</td>
<td><a href="http://www.gpo.gov/fdsys/">http://www.gpo.gov/fdsys/</a></td>
</tr>
<tr>
<td>OpenCongress</td>
<td><a href="http://www.opencongress.org/">http://www.opencongress.org/</a></td>
</tr>
<tr>
<td>U.S. Senate</td>
<td><a href="http://www.senate.gov/">http://www.senate.gov/</a></td>
</tr>
</tbody>
</table>
annotated versions of the United States Code have information that is more useful than simply the text of the statute, many researchers prefer to use the U.S.C.A. or U.S.C.S. rather than the official government code. Annotated codes are also updated more frequently than the official United States Code.

Once a researcher locates statutes relevant to the legal issue at hand, the researcher may wish to consult the annotations to both the U.S.C.A. and U.S.C.S., if available, because the cases and secondary authorities included by each publisher may differ (Cohen & Olson, 2013).

Updating Federal Statutes Because federal statutes are frequently changed (amended or repealed), it is important for researchers to locate the most recent versions. The annotated codes are published in hardcover editions, which are only reissued occasionally. In the back of each volume, however, is a paper supplement called a pocket part that updates the hardcover book annually. It is important to check the most recent pocket part to see if the statute being researched has been changed. When amendments to federal statutes cannot be contained in a single annual pocket part, a separate softbound supplement is issued (this volume sits next to the hardcover volume). Pocket parts may reprint only the sections of the statute that have been changed. If a particular section has not changed, the reader may be referred to the hardcover volume for the text of that section. It is also important to check the pocket part or softbound supplement to the main volume for current cases interpreting the statute being researched. Although pocket parts and supplements are published annually, they cumulatively update the bound volumes, which may not be reprinted for some years. The annual pocket parts and supplements may also include current references to secondary sources, such as legal encyclopedias and law review articles that analyze the statute being researched.

Recently enacted statutes will not be available in the annual pocket parts. Between publication of the annual pocket parts, both the U.S.C.A. and U.S.C.S. are updated by interim pamphlets that accompany each set of annotated codes. The annotated U.S.C.A. and U.S.C.S. are available electronically through the subscription databases Westlaw (U.S.C.A.) and LexisNexis (U.S.C.S.). Both are very current, eliminating the necessity to check pocket parts or supplements. Law schools typically subscribe to both databases. Academic institutions can provide access to legal resources such as annotated codes for all students and faculty by subscribing to the academic versions of Westlaw (Westlaw Campus Research) or LexisNexis (LexisNexis Academic). Federal statutes may be further updated and validated (checked for amendments or repeal) by consulting a print or online citator. Citators, which allow researchers to verify the authority of primary sources and to find additional sources relating to the legal issues they represent, are discussed in detail later in this chapter.

Pending Federal Legislation The status, history, and text of pending federal legislation (bills) and laws currently passed by Congress (public laws), before they are codified in the United States Code, are available through the Library of Congress’s Congress.gov website. Bills and public laws for several congresses are accessible by number and by keyword search. The House and Senate and their various congressional committees also maintain websites containing information on pending legislation. Websites such as Govtrack and OpenCongress are available for researchers to track pending federal legislation. Govtrack also offers experimental state legislative tracking tools for every state. Table 2.2 lists web addresses for finding and tracking federal legislation.

Finding Federal Statutes Several methods can be used to find federal statutes. The first method is to use the citation; the second is to use the popular name; and the third, when you know only the subject, is to use the code indexes.

By Citation A reference to a primary law source is a citation. The citation tells where the law source is located. Citations are always written in standard form. Figure 2.1 is a citation to a section of the Individuals with Disabilities Education Act (IDEA). The first number, 20, is the title number. The letters following the title number refer to the particular code; in this case, U.S.C. refers to the United States Code. The numeral 1401 is the section number (§ is the symbol for section). The (29) after 1401 is the subsection.
In the *United States Code*, the text of the IDEA begins at § 1400 and ends at § 1482. Title and section numbers will be constant in all three sources (i.e., the Individuals with Disabilities Education Act will appear in Title 20, §§ 1400–1482, in U.S.C., U.S.C.A., and U.S.C.S.). To locate the federal statute (section of the Individuals with Disabilities Education Act) represented in Figure 2.1, find the maroon set of books labeled U.S.C. or U.S.C.A. or the black set of books labeled U.S.C.S. On the spine of the volumes, look for the title number 20. Below the title number on the spine of each volume is the subject of that title (Education) and the section numbers contained in that volume. To find a statute with a citation to a particular title, section, and subsection, such as 20 U.S.C.A. § 1401(29) (the definition of *special education* under the Individuals with Disabilities Education Act), find the volume that contains Title 20 and section (1401) and turn to the subsection you need (29). The sections within each title are arranged numerically. Each volume of the U.S.C., U.S.C.A., and U.S.C.S. includes a table of contents listing which subjects are covered by the various chapters within that title. The table of contents also has the beginning section number for each chapter. For instance, Chapter 33 of Title 20 addresses Education of Individuals with Disabilities and begins with Section 1400. Although the chapter number is not included in a citation for the *United States Code* (only the title and section), it is useful for the researcher to know where a particular subject (chapter) is arranged within a certain title of the code.

**BY POPULAR NAME** If the citation for a federal law is not available but its popular name (e.g., Individuals with Disabilities Education Act) is known, the statutes can be found using a Popular Name(s) Table. In most law libraries, the Popular Name(s) Table is placed after the codes (U.S.C., U.S.C.A., and U.S.C.S.) and provides the following information: the law’s popular name, public law number and *United States Statutes at Large* citation, date of passage, and the title and code section(s) where the statutes that fall under the act are published (codified) in the *United States Code*.

**BY SUBJECT USING AN INDEX** If a researcher does not know a statute’s citation or popular name, the researcher can use an index to locate the statute by subject. For example, if the citation and popular name for the Individuals with Disabilities Education Act are not available, the researcher could use the General Index at the end of the U.S.C.S. and search under the topic “EDUCATION” for the entry “Special education, 20 §§ 1400 to 1482.” The annotated codes

<table>
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<tr>
<th>Table 2.2 Websites for Federal Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Website Names</strong></td>
</tr>
<tr>
<td>Cornell’s Legal Information Institute (LII)</td>
</tr>
<tr>
<td>GPO’s Federal Digital System (FDsys)</td>
</tr>
<tr>
<td>Govtrack.us</td>
</tr>
<tr>
<td>U.S. Dept. of Education Office of Special Education and Rehabilitative Services (OSERS)</td>
</tr>
<tr>
<td>Regulations.gov</td>
</tr>
<tr>
<td>The Unified Agenda</td>
</tr>
</tbody>
</table>

**FIGURE 2.1 Citation for a Section within the IDEA Statute**

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20 U.S.C. § 1401(29)
```

Title Number  United States Code  Section Number  Subsection
also include an index for each title in the back of the final volume for that title. If the researcher
happens to know that statutes relating to education are codified (arranged by subject) in Title 20
of the United States Code, the researcher could begin by searching the index at the end of that
title in the U.S.C.A. or U.S.C.S.

**FEDERAL STATUTES ONLINE** Online subscription databases, such as Westlaw and LexisNexis,
allow researchers to access their annotated versions of the United States Code by citation and by
popular name. Westlaw and LexisNexis also provide a table of contents and an index, as well as
the ability to search the full-text version or individual titles of the United States Code.

Most free Internet versions include options to retrieve sections by citation or popular name;
to browse by title, chapter, and section; or to search the full-text version or individual titles of the
United States Code (Table 2.2). The un-annotated Internet versions of the United States Code,
however, do not include citators, which alert researchers to pending legislation and recent amend-
ments to individual code sections. Citators are discussed in detail later in this chapter.

**Federal Regulations**

**THE CODE OF FEDERAL REGULATIONS** Federal administrative agencies, such as the U.S.
Department of Education, promulgate regulations to implement and enforce federal statutes
(e.g., the Individuals with Disabilities Education Act). Proposed and final federal regulations
are published daily in the Federal Register. Final regulations are codified by agency and subject
and published annually in the Code of Federal Regulations (C.F.R.). Both are published by
the Office of the Federal Register, National Archives and Records Administration (NARA) and
printed by the GPO. The Federal Register and Code of Federal Regulations are both available on
the GPO’s FDsys website (see Table 2.2).

**STATUTORY AUTHORITY** Each of the 50 titles in the C.F.R. covers a general subject area.
Titles in the C.F.R. and United States Code do not always correspond. For example, the subject
of Title 20 of the United States Code is education, but the subject of Title 20 of the C.F.R.
is employee benefits. Regulations regarding education are found in Title 34. Along with the text
of the regulations, the C.F.R. provides references to the statutes that authorize them (authority) and
date of their publication in the Federal Register (source). The Index and Finding Aids volume
accompanying the C.F.R. set contains a Parallel Table of Authorities and Rules, which allows
researchers to identify regulations enacted pursuant to a particular statute. The current Parallel
Table of Authorities and Rules is also available on the GPO’s FDsys website. Both annotated
versions of the United States Code also include cross-references to regulations.

**Finding Federal Regulation**

Federal regulations may be located by citation, by subject, and on relevant federal agency websites.

**FINDING REGULATIONS BY CITATION** Regulations, like statutes, have citations that are written
in a standard form directing the researcher to where the regulation is located. Figure 2.2 is the
citation for a section of the Individuals with Disabilities Education Act.

The first number, 34, is the title number. C.F.R. stands for the Code of Federal Regulations.
The number 300 is the part of title 34 where the regulation can be found. The 300.39 is the spe-
cific section of the IDEA regulations that further describes the term special education. To locate
this federal regulation in a law library, find the paperbound set of books labeled Code of Federal
Regulations. Every year the colors of the C.F.R. volumes are changed. The revision year included

![Figure 2.2](image-url)
in the citation in Figure 2.2 appears on the front cover of each volume of regulations in the C.F.R. The title number (34) can be found on the spine of the volumes. Section numbers of regulations contained in each volume are listed under the title number. Researchers may also retrieve a regulation by citation from GPO’s FDsys website and other nongovernmental websites (Table 2.2).

**FINDING REGULATIONS BY SUBJECT** If the citation for a federal regulation is unavailable, researchers may consult the annually revised CFR Index and Finding Aids volume of the Code of Federal Regulations to locate regulations by subject. Researchers can also find regulations by subject through a keyword search of the entire Code of Federal Regulations or by searching an individual title on GPO’s FDsys website and other nongovernmental websites (Table 2.2).

**FEDERAL AGENCY WEBSITES** A federal agency’s website can be a great resource for researchers to identify regulations governing a particular area of law (e.g., special education), along with the statutes authorizing that agency to promulgate and enforce those regulations. For instance, the U.S. Department of Education’s ED.gov website hosts the Building a Legacy: IDEA 2004 webpage, which contains resources related to the Individuals with Disabilities Education Act of 2004 and its implementing regulations. Louisiana State University’s (LSU) Federal Agency Directory includes a listing of all federal agency websites (Table 2.2).

**UPDATING REGULATIONS** Individual titles of the C.F.R. are revised annually. For example, Title 34 of the C.F.R. is revised each year on July 1. Like statutes, however, regulations are often changed in some way. To determine if a regulation has changed since the annual print volume for that title was last revised, researchers should consult the most recent monthly pamphlet entitled Code of Federal Regulations List of Sections Affected (LSA) and the back pages of the most recent Federal Register for C.F.R. parts affected during that month.

The GPO’s FDsys website includes the most current List of CFR Sections Affected (LSA) and Federal Register. GPO’s FDsys now also offers the unofficial Electronic Code of Federal Regulations, or e-CFR, which incorporates amendments from the LSA and Federal Register within a few days (Table 2.2).

Citators, discussed in detail later in this chapter, alert researchers to newly proposed amendments to regulations and help researchers locate cases and secondary sources that have cited a particular regulation.

**TRACKING REGULATIONS** Researchers may also consult websites such as Regulations.gov, which are designed for citizens to track and comment on proposed regulations before they become final and codified in the Code of Federal Regulations. There is also a semiannual Unified Agenda, which summarizes the proposed and final regulations each agency expects to issue during the next year (Table 2.2).

**FEDERAL REGULATIONS ONLINE** As discussed earlier, the Federal Register and Code of Federal Regulations are available for free on the Internet through the GPO’s FDsys website. Researchers may also search the Federal Register and annotated versions of the Code of Federal Regulations by citation or full-text search using subscription databases such as Westlaw and LexisNexis, which are current within a few days. Many colleges and universities subscribe to academic versions of Westlaw (Westlaw Campus Research) or LexisNexis (LexisNexis Academic) as well as to HeinOnline. HeinOnline offers scanned images of the Federal Register and Code of Federal Regulations from their first day of publication, along with indexes for both publications.

**State Statutes and Regulations**

**STATE STATUTES** Some states organize their statutes in volumes according to subject by name (e.g., education, health), while most states assign a title or chapter and section number to each subject, similar to the United States Code. Citations for state statutes typically refer to the name, title, or chapter within which the statute is arranged, along with section numbers and the publication date of the volume(s) where the statute is published. All states have at least one annotated code containing summaries of cases and references to secondary sources that cite
individual statutes. Many collections of state statutes include general indexes for all laws as well as indexes for each subject. State annotated codes often include popular name(s) tables.

State statutes, like federal statutes, are often amended and can be repealed. The hardcover volumes of state statutes are updated by annual pocket parts, and some states publish interim pamphlets as well. State annotated codes are available on Westlaw and LexisNexis to retrieve statutes by citation or full-text search. Westlaw also includes an index for each state code. State statutes may be validated (checked for amendments or repeal) using a citator (discussed in detail later in this chapter).

All states now have the typically unofficial and un-annotated versions of their codes available on the Internet in some format. State legislative websites generally allow researchers to search by keyword and to browse by title, chapter, or section. Some include popular name(s) tables and indexes. For access to legislative websites for all states, researchers can consult the website for the National Conference of State Legislatures and other state resource websites maintained by entities such as FindLaw and Cornell’s LII. Their web addresses are provided in Table 2.3.

**STATE REGULATIONS** State regulations can be difficult to locate in print. In many states, regulations are published in looseleaf formats by the promulgating agency, while some are published as part of their state codes. Law libraries may carry only the regulations for their state. Some state regulations are annotated with case summaries and secondary sources. Usually, special education regulations are included under the broader category of education regulations. This is because special education regulations are typically promulgated by the state’s department of education. Like federal regulations, proposed and final state regulations are first published in state registers. Researchers may also use a citator to validate a particular state regulation and to locate primary and secondary sources that cite that regulation (discussed in detail later in this chapter). Westlaw and LexisNexis include current databases for all available state regulations.

Typically unofficial and unannotated state regulations and registers are also available on state government websites and can generally be browsed by section, chapter, or title and searched by keyword. Links to all state regulations available on the Internet are included on the Administrative Codes and Registers (ACR) website (a section of the National Association of Secretaries of State). FindLaw, Cornell’s LII, and the Law Librarians’ Society of Washington, DC also provide links to all available state regulations.

State government websites, accessible through FindLaw, Cornell’s LII, and USA.gov, include links to department of education websites for each state, which should include information on the special education laws and regulations that state enforces (Table 2.3).

**Case Law**

An important part of legal research is finding court opinions (i.e., cases) that interpret statutes and regulations. Cases are published in volumes called reporters by the level of court where decided for federal courts, and by geographical regions and sometimes level of court for state courts. Print reporters are available in major law libraries that have the funding to maintain such large collections, while many libraries provide access to state and federal court opinions via electronic databases (discussed later in this chapter).

**FEDERAL CASES** There are no official publications by the government for federal district or appellate court opinions. With the exception of electronic databases, the only source for decisions

**Table 2.3 Websites for All State Statutes and Regulations**

<table>
<thead>
<tr>
<th>Website Names</th>
<th>URL</th>
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<tbody>
<tr>
<td>ACR: Administrative Codes and Registers</td>
<td><a href="http://www.administrativerules.org/">http://www.administrativerules.org/</a></td>
</tr>
<tr>
<td>FindLaw: State Resources</td>
<td><a href="http://www.findlaw.com/casecode/">http://www.findlaw.com/casecode/</a></td>
</tr>
<tr>
<td>LLSDC</td>
<td><a href="http://www.llsd.org/state-legislation">http://www.llsd.org/state-legislation</a></td>
</tr>
<tr>
<td>National Conference of State Legislatures</td>
<td><a href="http://www.ncsl.org/">http://www.ncsl.org/</a></td>
</tr>
</tbody>
</table>
of the lower federal courts is the print reporters published by West (a division of Thomson Reuters). The published decisions of the U.S. District Courts (federal trial courts) are collected in a series of reporters called the Federal Supplement (abbreviated F. Supp.). West began publication of the Federal Supplement, Second Series (abbreviated F. Supp. 2d) in 1998 after the 999th volume of the Federal Supplement. Decisions by the U.S. District Courts are appealed to federal courts of appeals, which are organized by circuits. Decisions by the U.S. Courts of Appeals are published in a series of reporters called the Federal Reporter. In 1924 the Federal Reporter, Second Series, began. This series (abbreviated F.2d) ran for 999 volumes. In 1994, volume 1 of the Federal Reporter, Third Series (abbreviated F.3d) was issued.

Appeals from the U.S. Courts of Appeals and from state courts of last resort are to the U.S. Supreme Court. Opinions of the U.S. Supreme Court are published in three different sources. The United States Reports (abbreviated U.S.) is the official report because it is printed by the U.S. government. The reporter published by Thomson Reuters (West) is called the Supreme Court Reporter (abbreviated S.Ct.). A third reporter, United States Supreme Court Reports, Lawyers’ Edition (abbreviated L.Ed. and now in its second series), is published by Matthew Bender, a member of the LexisNexis Group. The three reporters contain the same cases, but the latter two unofficial publications include editorial enhancements. The Supreme Court Reporter is part of West’s complete legal reference system called the National Reporter System, which arranges headnotes at the beginning of cases by topic and key number, while United States Supreme Court Reports, Lawyers’ Edition provides editorial comments about each case and annotations referring to other cases on the same subject. Table 2.4 lists abbreviations for the federal court reporters.

<table>
<thead>
<tr>
<th>Table 2.4 Federal Court Reporters</th>
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<tbody>
<tr>
<td>Reporter</td>
</tr>
<tr>
<td>(1998–present)</td>
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<tr>
<td>Federal Reporter, Second Series</td>
</tr>
<tr>
<td>(1924–1994)</td>
</tr>
<tr>
<td>Federal Reporter, Third Series</td>
</tr>
<tr>
<td>(1994–present)</td>
</tr>
<tr>
<td>United States Reports</td>
</tr>
<tr>
<td>Supreme Court Reporter</td>
</tr>
<tr>
<td>United States Supreme Court</td>
</tr>
<tr>
<td>Reports, Lawyers’ Edition</td>
</tr>
<tr>
<td>United States Supreme Court</td>
</tr>
<tr>
<td>Reports, Lawyers’ Edition, Second</td>
</tr>
<tr>
<td>Series</td>
</tr>
</tbody>
</table>

There is a lag between the date a case is decided and the publication of that case in a hardcover reporter. During this lag period, new cases can be found in paperback updates called advance sheets, located on the shelf at the end of the hardcover reporters.

The availability of the Internet, however, has made current opinions accessible from official federal court websites on a daily basis. The United States Courts website provides links to the U.S. Supreme Court and all U.S. Courts of Appeals and U.S. District Court websites. The official U.S. Supreme Court website not only publishes slip opinions, but also includes bound volumes of decisions from 1991 forward, transcripts of oral arguments, and briefs. In addition, Chicago-Kent College of Law’s Oyez Project website provides digital audio recordings of oral arguments before the U.S. Supreme Court as well as links to the full-text versions of opinions from 1793 forward from Justia’s U.S. Supreme Court website. Historic Supreme Court decisions and links to all federal court websites are also included in collections maintained by Cornell’s LII, FindLaw, and Justia. Table 2.5 lists web addresses for federal court opinions.

The researcher should keep in mind, however, that federal and state court opinions accessible on the Internet will not include the editorial enhancements (e.g., synopses and headnotes with topics and key numbers) that the bound volumes of West’s National Reporter System provides (see following discussion under Finding Cases).
Online subscription databases such as LexisNexis and Westlaw include comprehensive databases for all federal and state cases and include many editorial enhancements as well as citators (discussed below) to check the validity of a case and to locate primary and secondary sources that cite that case.

**STATE CASES** The published appellate court opinions for each state can be found in that state’s official report or in regional reporters published by Thomson Reuters (West). Many states have, in fact, discontinued their official reports and rely solely upon West’s regional reporters to publish their appellate court decisions.

West’s regional reporters contain opinions for each state and the District of Columbia. West divides the country into seven regions and publishes the appellate decisions of certain states together. Table 2.6 lists the states as they are arranged by region in West’s National Reporter System. Separate reporters are published for California and New York. Advance sheets containing recent opinions before the publication of the next hardbound volume are also provided for the regional reporters. State appellate courts now typically publish their slip opinions immediately on their judicial websites.

Several free websites also provide access to court opinions for all states. For example, Cornell’s LII maintains links to all state judicial websites and Google Scholar enables researchers to search federal and state cases individually or together. See Table 2.5 for web addresses for federal and state court opinions.

**Finding Cases**

Federal and state court decisions are published in reporters chronologically rather than by subject. Major academic law libraries may contain millions of reported cases. Without a means of accessing these cases, however, research would be a hopeless endeavor. Therefore, finding tools that enable researchers to access opinions by citation, by case name, and by subject becomes essential.

**Table 2.5** Websites for Federal and State Court Opinions

<table>
<thead>
<tr>
<th>Website Names</th>
<th>URL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cornell’s Legal Information Institute (LII)</td>
<td><a href="http://www.law.cornell.edu/">http://www.law.cornell.edu/</a></td>
</tr>
<tr>
<td>FindLaw’s Cases and Codes</td>
<td><a href="http://www.findlaw.com/casecode/">http://www.findlaw.com/casecode/</a></td>
</tr>
<tr>
<td>Google Scholar</td>
<td><a href="http://scholar.google.com/">http://scholar.google.com/</a></td>
</tr>
<tr>
<td>Justia</td>
<td><a href="http://www.justia.com">http://www.justia.com</a></td>
</tr>
<tr>
<td>Public Library of Law</td>
<td><a href="http://www.plol.org/">http://www.plol.org/</a></td>
</tr>
<tr>
<td>Supreme Court of the United States</td>
<td><a href="http://www.supremecourt.gov">http://www.supremecourt.gov</a></td>
</tr>
<tr>
<td>United States Courts</td>
<td><a href="http://www.uscourts.gov">http://www.uscourts.gov</a></td>
</tr>
</tbody>
</table>

**Table 2.6** West’s Regional Reporters

<table>
<thead>
<tr>
<th>Reporter</th>
<th>States and Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlantic Reporter</td>
<td>CT, DC, DE, MD, ME, NH, NJ, PA, RI, VT</td>
</tr>
<tr>
<td>Northeastern Reporter</td>
<td>IL, IN, MA, NY, OH</td>
</tr>
<tr>
<td>Northwestern Reporter</td>
<td>IA, MI, MN, NE, ND, SD, WI</td>
</tr>
<tr>
<td>Pacific Reporter</td>
<td>AK, AZ, CA, CO, HI, ID, KS, MT, NM, NV, OK, OR, UT, WA, WY</td>
</tr>
<tr>
<td>Southeastern Reporter</td>
<td>GA, NC, SC, VA, WV</td>
</tr>
<tr>
<td>Southern Reporter</td>
<td>AL, FL, LA, MS</td>
</tr>
<tr>
<td>Southwestern Reporter</td>
<td>AR, KY, MO, TN, TX</td>
</tr>
<tr>
<td>New York Supplement</td>
<td>New York Court of Appeals, Appellate Division of the State Supreme Court, and additional state courts (The highest court in New York is the Court of Appeals; the intermediate court is called the Supreme Court.)</td>
</tr>
<tr>
<td>California Reporter</td>
<td>California Supreme Court and intermediate appellate courts</td>
</tr>
</tbody>
</table>
FINDING CASES BY CITATION Every published decision includes a citation to where it is located in a reporter. Case citations follow a standard format. Figure 2.3 is a citation to a special education case.

The first item in the citation is the name of the case (Daniel R.R. v. State Board of Education). The name of the case will usually be two names separated by “v.” (versus). The first name will be the plaintiff or the appellant. The plaintiff is the party that initially brought the suit seeking a remedy from the court. In the case of an appeal, the appellant is the party that appeals the decision of the lower court, whether the party was the original plaintiff or the defendant. The plaintiff in this case was Daniel R.R. The second name is that of the defendant (the party who has been sued and is responding to the complaint of the plaintiff). If the defendant appeals the ruling of the lower court, in most states that party will become the appellant and will then be listed first. The defendant in this case was the State Board of Education of Texas. Cases sometimes only have a phrase and one name, such as In Re Gary B. The phrase in re is Latin and means “in the matter of.” Usually this means there was no opponent in the court proceeding. Researchers can access citations to court opinions by case name using the Table of Cases volumes included with print digests (discussed later in this chapter) and using online resources.

The second element in the citation is the volume number of the reporter in which the case appears. The volume number of the Daniel R.R. case is 874. Volumes in reporters are numbered consecutively. The third element of the citation is the name of the reporter. The reporter in which Daniel R.R. can be found is the Federal Reporter, Second Series, written as F.2d (called “Fed second”). The F.2d contains cases heard by the U.S. Courts of Appeals; therefore, Daniel R.R. was heard by a federal appellate court. The fourth element of the citation is the page number on which the case starts. Thus, the Daniel R.R. decision can be found on page 1036 of volume 874 of the F.2d reporter.

The final element of the citation is the year of the decision. In researching cases, it is important to include the most recent ones. In federal cases, the level of court deciding the case will appear along with the year of the decision. Daniel R.R. was decided by the U.S. Court of Appeals for the Fifth Circuit in 1989. If the decision is from a federal district court, the state and judicial district of the case will be included. For example, the court that decided Hayes v. Unified School District, 699 F. Supp. 1519 (D. Kan. 1987) was the U.S. District Court for the District of Kansas, while Espino v. Besteiro, 520 F. Supp. 905 (S.D. Tex. 1981), was decided by the U.S. District Court for the Southern District of Texas. If cases can be found in more than one reporter, the names of all the reporters may be included in the citation. For example, a case decided by the U.S. Supreme Court will appear in all three reporters (U.S., S.Ct., and L.Ed.) and all three “parallel” cites may be included in its citation. The landmark decision Brown v. Board of Education is often cited to include all three reporters as follows: Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). State court rules often require parallel citations to include both the official state reports and West regional reporter cites for that states’ appellate court opinions.

Finding Cases by Subject

Several finding tools are designed to help the researcher locate primary sources, particularly cases. Finding tools discussed here include annotated codes, case digests, citators, and American Law Reports (ALR).

THE ANNOTATED CODES The annotated versions of the United States Code—United States Code Annotated (U.S.C.A.) and United States Code Service (U.S.C.S.)—are powerful research tools. In addition to the statutory language contained in the United States Code, the annotated...
codes include a wealth of information useful to researchers. For example, West’s U.S.C.A. contains information on legislative history; cross-references to other federal statutes and regulations; references to the West topics and key numbers (discussed below); citations to West’s legal encyclopedias (American Jurisprudence 2d [Am Jur 2d] and Corpus Juris Secundum [CJS]) as well as other secondary sources, such as law reviews; and notes with citations to relevant court decisions. The “Notes of Decisions” following the statutes in the U.S.C.A. consist of abstracts of relevant cases that have interpreted the statute. The most current annotations are contained in the pocket parts to each volume and the interim pamphlets that update the annotated codes. Both annotated codes are available through the subscription databases, Westlaw (U.S.C.A.) and LexisNexis (U.S.C.S.).

THE WEST DIGEST SYSTEM Another useful tool for locating cases is West’s digest system. For each set of West’s reporters there is a corresponding digest. Table 2.7 contains a partial list of West’s digests and their coverage. West’s digests are alphabetical indexes to case law, arranging headnotes of cases by topics and key numbers. To access the West digest system, the researcher must understand the topic and key number system.

THE WEST TOPIC AND KEY NUMBER SYSTEM An opinion published in a West reporter follows a standard format. Figure 2.4 is the first page of the Daniel R.R. v. State Board of Education opinion. The first item on the page is the name of the case; Daniel R.R. v. State Board of Education. Daniel R.R. is listed as the plaintiff-appellant and the Board of Education is the defendant. Following the title is the docket number (No. 88-1279), the court in which the case was heard (U.S. Court of Appeals for the Fifth Circuit), and the date the court’s decision was handed down (June 12, 1989). Following this information is the synopsis of the decision, written by an editor at West.

Next is the headnote section. A headnote is a one-sentence summary of a legal issue arising in a case. The headnotes are not part of the judicial opinion but are an editorial enhancement. Editors at West review judicial opinions and write the headnotes by isolating the individual issues of law that appear in each decision. Often opinions contain a number of legal issues and will therefore have a number of headnotes. Daniel R.R. contains 16 headnotes. Each headnote will appear as a boldface number (e.g., 2), followed by a topic (e.g., Schools), an illustration of a key, and a number (e.g., 148[2]) (see Figure 2.4).

The headnote numbers (e.g., the boldface 2) are in order and are used as a table of contents to the case. Numbers corresponding to the headnotes appear in the text of the case at the point where that legal issue is discussed. The term or phrase after the number (e.g., Schools) is the topic where West has classified that legal issue. Following the image of a key is the key number (148[2]), which represents a subsection of that legal topic.

For example, in headnote number 2 of the 16 headnotes in Daniel R.R. is Schools 148(2). “Schools” is a topic area. The number 148 refers to the subtopic “Nature of right to instruction in general.” The number 2 in parentheses represents a subtopic of 148, entitled “Handicapped

<table>
<thead>
<tr>
<th>Table 2.7 West’s Digest System</th>
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<tr>
<td><strong>Digest</strong></td>
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<tr>
<td>General Digest</td>
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<tr>
<td>Decennial Digest</td>
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<tr>
<td>Modern Federal Practice Digest</td>
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<tr>
<td>Federal Practice Digest 2d</td>
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<tr>
<td>Federal Practice Digest 3d</td>
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<tr>
<td>Federal Practice Digest 4th</td>
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<tr>
<td>U.S. Supreme Court Digest</td>
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<tr>
<td>State and Regional Digests</td>
</tr>
<tr>
<td>Specialized Digests</td>
</tr>
</tbody>
</table>
children and special services therefore." There are over 400 topics and numerous subtopics in the West digest system. At the beginning of each topic in a West digest is an outline of all of its subtopics and corresponding key numbers.

In whichever West digest a researcher uses (e.g., federal, state, or regional), cases addressing instruction and special services for children with disabilities will appear under the topic and key number 148(2). Therefore, researchers can use West's print digests or Westlaw to find all state and federal cases published on that topic.

**USING THE DIGEST SYSTEM** Each West digest contains headnotes for certain courts and is designed to fill a different need. The largest digest group includes the *Decennials* and the *General Digest*, which contains headnotes for cases from all state and federal courts. The *Decennials* and
the General Digest have been subdivided into smaller, more specific, digests (e.g., state, regional, federal, and specialized digests).

When using West digests to find cases, it is preferable to begin with the one that is narrowest in scope. Therefore, a researcher who is only interested in federal cases should consult the Federal Practice Digests. Federal Practice Digests also contain U.S. Supreme Court cases; however, researchers interested in U.S. Supreme Court cases only may consult West’s U.S. Supreme Court Digest.

Special educators will usually be interested in federal special education cases, so the appropriate digest will be the Federal Practice Digest (now in its fourth series). It contains headnotes from every case appearing in West’s Supreme Court Reporter (S.Ct.), Federal Reporters (F.2d and F.3d), and Federal Supplement (F. Supp. and F. Supp.2d).

To find relevant cases using a digest, the researcher must first determine the relevant topic and key number(s) (e.g., Schools 148[2]). In the topical volumes of a digest, headnotes are arranged under each topic and key number by jurisdictions in chronological order, beginning with the most recent. The topic and key number system is uniform in every West digest.

The easiest way to find cases using a digest is to begin with headnotes from a case on point. In Figure 2.5 the Daniel R.R. v. State Board of Education decision is used as an example of how to access West’s digest system using the topic and key numbers from a relevant case. Whatever case is used, the method of using the West digest system will be the same.

Cases can also be located by subject using the descriptive word indexes, by case name using the table of cases volumes, and by specific terms interpreted by courts using the words and phrases volumes. All of these volumes are located at the end of each digest set. Researchers may also find cases using the topical outlines at the beginning of each volume within the digest volumes. Digests are updated with recent headnotes by pocket parts and softcover supplements.

In Westlaw, researchers can find cases on a particular topic by clicking on a relevant topic and key number in a case and choosing the appropriate jurisdiction(s). Researchers may also search or browse the West Key Number System in Westlaw. LexisNexis has also developed its own topic and headnote system to enable researchers using its online subscription database to find cases relevant to a particular topic.

**CITATORS**  
Citators help researchers validate and expand their research. After a researcher identifies a relevant case, it is critical to ensure that the case is currently valid. That is, does it still have precedential value, or has it been overruled or reversed or even highly criticized? Researchers use citators to determine if a case has been reversed or overruled and how it has been treated by other courts. Researchers also use citators to locate cases and secondary sources that have cited a case. Citators are available for other primary authorities (e.g., statutes and regulations) as well and for some secondary sources.

Shepard’s® Citations, which is owned by LexisNexis, is available in print and through LexisNexis online databases. Many colleges and universities subscribe to LexisNexis Academic, which allows researchers to shepardize state and federal cases online; thus eliminating the necessity for academic libraries to maintain print versions of Shepard’s®. West’s citator is called

**FIGURE 2.5 Using West’s Digest System**

1. Locate the Daniel R.R. decision at 874 F.2d 1036 in the F.2d reporter.
2. Read the headnotes at the beginning of the case and note the topic and key numbers. If the researcher is interested in the issue of law raised in headnote 2, locate Schools 148(2) in the appropriate digest.
3. Whenever possible use the more specific digest; therefore, locate the Federal Practice Digest in the library.
4. Locate the volume of the Fourth Series that contains the topic Schools, key number 148(2). The correct volume number is 84.
5. Turn to the page that begins with headnotes that are keyed 148(2). Headnotes with the key number 148(2) from all federal court cases will be listed by jurisdictions in reverse chronological order (most recent first).
6. Check the pocket part and white softcover supplements for the most recent cases.
KeyCite®. KeyCite® performs the same verification and research functions as Shepard’s and is available exclusively online through Westlaw. Bloomberg Law, which is rapidly becoming a third major online legal research, database has developed its own citator called BCite.

Citators indicate by a system of symbols or signals whether a case has been overruled or reversed by a higher court and help researchers find other cases that have dealt with similar issues. Citators list the cases that have cited a particular case. For example, if a researcher is interested in least restrictive environment cases and has the citation for Daniel R.R. v. State Board of Education, a citator can be used to locate other federal decisions that have cited it. Because Daniel R.R. has proved to be a persuasive case, most subsequent federal cases on least restrictive environment have cited it. However, other least restrictive environment cases that do not cite Daniel R.R. will not be listed. Researchers can find those cases using the topic and key numbers found in the headnotes in Daniel R.R. to consult West’s Federal Practice Digest in print or on Westlaw or using the headnotes in LexisNexis online databases.

**AMERICAN LAW REPORTS (ALR) ANNOTATIONS** ALR, which is published by Thomson/ West, is an excellent resource for finding cases. Each annotation begins with a court decision addressing a particular legal issue. The opinion is reprinted in the ALR followed by suggested secondary sources for further research on the topic covered in the case and a comprehensive survey of cases from across the country addressing the same legal issues. ALR annotations are published in print volumes that are updated annually by pocket parts. The ALR Index lists ALR annotations by subject and includes a table of annotations by federal and state laws, rules, and regulations. West’s ALR Digest organizes ALR annotations by their principal West topic and key number. ALR annotations are also accessible online through Westlaw and LexisNexis.

**SECONDARY SOURCES** Secondary sources are materials that describe and explain the law. Because secondary materials are not actual statements of law, they have no formal authority. They may, however, have significant persuasive authority.

In conducting legal research, it is often easier to begin with secondary sources. Secondary sources have two primary functions: They introduce the researcher to a particular area of the law by explaining the issues involved, and they provide citations to primary source material, e.g., statutes, regulations, and cases. Of the many secondary sources available, included are citation guides, legal dictionaries, legal encyclopedias, books and treatises, law review and journal articles, and topical services. Many secondary sources are fully searchable through electronic databases such as Westlaw, LexisNexis, Bloomberg Law, and HeinOnline. The following discussion will focus on the secondary source materials that may be of greatest use to the educator.

**Legal Dictionaries and Encyclopedias**

**LEGAL DICTIONARIES** Common words can take on special meaning when used in the law; in addition, there are many terms and phrases, often in Latin, that are unique to the legal field. To better understand the language of the law, researchers turn to legal dictionaries such as Black’s Law Dictionary (also on Westlaw) and Ballentine’s Law Dictionary (also on LexisNexis). There are also dictionaries for specialized areas of law as well, such as Education and the Law: A Dictionary. Although not as comprehensive or authoritative, several other legal dictionaries are available on the Internet, including The People’s Law Dictionary on Law.com and Nolo’s Free Dictionary of Law Terms and Legal Definitions. Table 2.8 lists secondary source websites.

**CITATION GUIDES** The legal field has its own citation style, with numerous unique abbreviations. The standard citation guide for legal materials is The Bluebook: A Uniform System of Citation. Many legal writers, however, prefer the Association of Legal Writing Directors’ ALWD Citation Manual. Cornell’s LII publishes an online guide entitled Introduction to Basic Legal Citation, which includes examples for both citation styles (Table 2.8).

**LEGAL ENCYCLOPEDIAS** Two national legal encyclopedias help researchers understand the law: American Jurisprudence 2d (Am Jur 2d) and Corpus Jurus Secundum (CJS). Both
multivolume sets are published by Thomson/West and are arranged in alphabetical order by topic and section numbers. Each set has its own annual set of General Indexes, including a Table of Laws and Rules. Both are updated using annual pocket parts. CJS is available on Westlaw. Am Jur 2d is available on Westlaw, LexisNexis, and LexisNexis Academic. Am Jur 2d and CJS include extensive footnotes to cases for each topic as well as references to West’s topics and key numbers for locating more cases using the West Digest system. Neither publication cites state statutes, but both cover federal laws. For example, Am Jur 2d and CJS discuss the Individuals with Disabilities Education Act under the topics “Schools” and “Schools and School Districts,” respectively. West’s Encyclopedia of American Law, which is geared more toward a general audience, can be found in many libraries. Encyclopedias are also available on specialized legal topics, for example, the Encyclopedia of Education Law.

Books and Treatises

Books and treatises help researchers identify relevant primary source materials (statutes, regulations, and cases) on particular legal topics. Books and treatises also help researchers gain a better understanding of the legal issues involved in an area of law. Books on education law and special education law range in complexity from nutshells, which are a series of paperbacks published by West in a simple and straightforward manner on a range of legal topics (e.g., The Law of Schools, Students, and Teachers in a Nutshell), to hornbooks, which are single-volume hardback books that cover the key issues involved in a specific area of legal study (e.g., Disability Civil Rights Law and Policy), to multivolume treatises. A treatise is an exhaustive treatment of a field of law by a legal scholar or practitioner that can span multiple volumes. Treatises may be published in bound volumes or looseleaf binders (e.g., Special Education Law and Litigation Treatise) and are usually updated annually. Many are available online on Westlaw, LexisNexis, Bloomberg Law sites, and as stand-alone databases.

SEARCHING THE CATALOG

Researchers should always check their library’s online catalog for dictionaries, encyclopedias, books, and treatises on the topic they are researching. The catalog record will indicate whether a resource is available in print, online, or is restricted to specific users via password. Colleges and universities can also borrow books from other academic institutions through interlibrary loan programs; therefore, researchers may wish to consult the online catalog WorldCat, which searches the collections of libraries around the world for books as well as articles. Law school libraries such as Harvard and Georgetown also maintain websites that list treatises by subject (Table 2.8).

Law libraries may also offer online resources such as IndexMaster™, which allows researchers to identify secondary sources relevant to a particular legal topic, for example, special education law, by searching thousands of titles and reviewing their indexes and tables of contents.

Law Review and Journal Articles

Because of their extensive coverage and footnoting to primary authorities and other secondary sources, law review articles can “introduce the researcher to a universe of legal information”
(Berring & Edinger, 2005, p. 319). It is not unusual to encounter pages in law review articles containing just a few lines of commentary and the rest footnotes, making them excellent case-finding tools. All accredited law schools in the United States produce law reviews. Law reviews are periodicals that contain articles on legal developments, legal issues, historical research, and empirical studies. Law reviews are usually edited by law students and include lengthy articles written by law professors, scholars, and practitioners along with shorter notes and comments authored by law students. Law review articles are often cited by legal scholars as well as by the courts and can have great persuasive authority. Student notes and comments, while not as prestigious, can be helpful sources for legal research.

Many law schools publish one or more specialized academic journals in addition to general law reviews, such as the Journal of Law & Education, edited by the University of South Carolina School of Law and the University of Louisville’s Louis D. Brandeis School of Law.

**Indexes**

H.W. Wilson Company’s *Index to Legal Periodicals Retrospective: 1908–1981* and *Index to Periodicals Full Text: 1981–Forward* are available to colleges and universities through the EBSCOhost website. Both cover hundreds of legal periodicals and offer basic and advanced searching. The Gale Group began publishing the *Current Law Index* (CLI) in 1980. The CLI provides access to hundreds of legal periodicals and is available online to libraries as *LegalTrac*. Both the *Index to Legal Periodicals* (ILP) and *LegalTrac* provide the full text of some articles, and libraries may link researchers to other online databases such as LexisNexis Academic and HeinOnline to retrieve the full-text versions of articles not included.

**ONLINE DATABASES** Several online databases allow college and university students and faculty to search and retrieve the full-text versions of journal articles by citation, by author, and by subject. Two specific to law reviews and legal journals are LexisNexis Academic and HeinOnline. Coverage in LexisNexis Academic begins in 1982. HeinOnline can include digital images of articles from their first to the most current issues.

**OPEN SOURCE** Many law reviews across the country are now maintaining a web presence, and a growing number are including the full-text versions of articles on their websites. In fact, in the decade of the 1990s and 2000s there has been a growing movement in favor of “open access” to legal information both primary and secondary (e.g., law review articles). Law review and legal journal articles are not only accessible to browse, but are full-text searchable on such websites as Google Scholar and the American Bar Association’s (ABA) Free Full-Text Online Law Review/Law Journal Search Engine (Table 2.8).

**CITATORS** Online citators such as Shepard’s® on LexisNexis and LexisNexis Academic and KeyCite® through Westlaw can be used to both find journal articles that cite a particular primary source of law and to locate legal resources that cite a particular law review. HeinOnline’s ScholarCheck provides links to articles in its database that cite the article a researcher is reading via a link titled “Articles that cite this document.”

**Looseleaf or Topical Services**

Looseleaf services contain analyses of legal issues and reprints of primary source material in specific subject areas. A looseleaf service therefore may serve as both a secondary source and as a finding tool for primary authorities.

The traditional looseleaf service is a publication that is issued in a binder with removable pages. The publisher monitors legal developments in the subject area the service covers and regularly issues new pages to keep the publication current. The primary advantages of looseleaf services are that the information is current (updated frequently) and that much of the information needed to conduct research on a particular topic has already been compiled for the researcher, including authorities not published in West’s National Reporter System, such as decisions of trial courts and state and federal administrative agencies.

Looseleaf services that were once published only in binders in print are now also available online as stand-alone databases or on LexisNexis and Westlaw or both. An example of a special
education looseleaf service is the *Individuals with Disabilities Education Law Report*® (IDELR), published by LRP Publications in print and through its online database Special Ed Connection.

Researchers may consult the publication *Legal Looseleafs in Print* to identify looseleaf services currently published on a particular legal topic, for example, education law or special education law. *Legal Looseleafs in Print* indexes looseleaf services by subject, publisher, and title and indicates whether each looseleaf service listed is available as part of an online database or on the Internet.

No two looseleaf services or online databases (referred to as topical services) are the same; therefore, the key to using such a valuable service for legal research is to become familiar with its unique finding aids and indexing system.

Treatises on a particular area of law or legal topic may also be published in looseleaf format for ease of updating. One example is *Legal Rights of Persons with Disabilities: An Analysis of Federal Law*, also published by LRP Publications.

**News and Current Awareness**

With the availability of online access to legal information today through legal newspapers, newsletters, blogs, and even Facebook and Twitter, researchers can learn about a new development in an area of law almost immediately.

**NEWSPAPERS** Online legal journal indexes (e.g., LegalTrac) and databases (e.g., LexisNexis, Westlaw, and Bloomberg Law) provide access to legal news articles. Several legal news sources are also available on the Internet. For example, FindLaw, Law.com, and Jurist offer daily legal news, including information on key court decisions across the country and around the world. Table 2.9 lists websites for current awareness in special education law.

**NEWSLETTERS** Newsletters are also published for specialized areas of law and may be available in print, as part of an online topical database, or via the Internet. Many newsletters are part of a looseleaf or topical service, which may be available in print, online, or both. For example, the *Individuals with Disabilities Education Law Report*® (IDELR) looseleaf service, published by LRP Publications, includes a biweekly newsletter (*Highlights*) that provides updates on recent decisions and rulings in special education law. IDELR is also available online through Special Ed Connection, which includes Special Ed e-news via weekly e-mails. Researchers may also subscribe to electronic newsletters on the Internet published by governmental agencies, for example, the U.S. Department of Education’s ED.gov website, or by experts in special education law, for example, Wrightslaw’s *Special Ed Advocate* (Table 2.9).

**BLOGS** Blogs allow attorneys, law professors, and education professionals to report and comment on developments in special education law as they occur, from state-level due process hearings to cases on appeal to the U.S. Supreme Court. The blog developed for readers of this textbook, http://www.spedlawblog.com, also reports on developments in special education law. Blogs and blawgs, which are blogs about the law, are so prevalent today that directories and search engines have developed to locate blogs by author, title, region, and subject (e.g., special education law) and to search blog postings. Examples include the ABA’s Blawg Directory and Justia’s BlawgSearch (Table 2.9). Bloggers also include lists called blogrolls on their blogs directing researchers to other blogs they read.

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<thead>
<tr>
<th>Table 2.9 Websites for Current Awareness in Special Education Law</th>
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<tbody>
<tr>
<td><strong>Website Names</strong></td>
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<tr>
<td>ABA Blawg Directory</td>
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<tr>
<td>BlawgSearch</td>
</tr>
<tr>
<td>FindLaw</td>
</tr>
<tr>
<td>Jurist</td>
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<tr>
<td>The Law and Special Education</td>
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</table>
ELECTRONIC LEGAL RESEARCH

As noted throughout this chapter, many legal resources that were once available only in print are now accessible to researchers electronically through pay databases and increasingly for free via the Internet. Electronic legal research has not, however, replaced traditional legal research. Rather, it is used most effectively in combination with print resources available in the library.

Two major electronic legal research services, Westlaw and LexisNexis, are utilized by law firms, government entities, and law students across the country. For students and faculty in other disciplines, for example, education, colleges and universities generally subscribe to LexisNexis Academic or Westlaw’s Campus Research. Although the academic versions of LexisNexis and Westlaw contain fewer databases, they enable students and faculty to access a wide range of legal resources, including state and federal cases, statutes, regulations and constitutions, and secondary sources such as law review articles and legal encyclopedias.

Two primary advantages of electronic legal research services such as LexisNexis and Westlaw are the enormous amounts of information they contain and the speed with which the legal researcher can access their databases and navigate between them. Westlaw and LexisNexis are very current, and their databases are updated constantly. Both systems contain full libraries of cases, statutes, and regulations from all jurisdictions, as well as a variety of finding tools and secondary source materials. Both include editorial enhancements such as annotated codes and headnotes for cases that are unmatched by other systems. Another benefit offered by LexisNexis and Westlaw is the ease with which the researcher can move from one primary or secondary source to another through hypertext links to materials cited within the various search results.

These and many other electronic research services allow researchers to retrieve legal resources by citation, to browse tables of contents and indexes, and to search the full-text versions of distinct databases by keyword. Researchers choose the database they wish to search (e.g., U.S. Supreme Court decisions), then enter specific keywords designed to retrieve the desired information. For example, if the researcher searches a federal case law database and enters the keywords “special education” and “least restrictive environment,” the computer will retrieve federal cases that contain those words.

The key to successful full-text searching is to choose the smallest database possible, for example, U.S. Supreme Court cases instead of all federal and state cases, and to take advantage of all of the tools available within a particular database to filter or narrow and search within the results. No two electronic research services are the same and new databases and upgrades are constantly being added for more efficient searching. Therefore, for optimal search results, researchers should take advantage of the many tutorials, “Help” pages, and research tips available for the various research systems and databases.

THE INTERNET AND LEGAL RESEARCH

Throughout this chapter, the fee-based electronic research services were introduced along with specific Internet versions of print resources available at no cost. The Internet is particularly useful because all researchers can access information quickly for free. For example, if the U.S. Supreme Court or a U.S. Court of Appeals announces a decision in an area of special education, it may be days before the final court opinion is available in a law library, and months before analyses of the decision appear in scholarly journals. Using the Internet, however, one can access the full opinion on the court’s website within hours after it is announced. Analyses of the decision may be available almost as quickly. Similarly, when Congress passed the Individuals with Disabilities Education Improvement Act of 2004 reauthorizing the Individuals with Disabilities Act, the text of the new legislation was posted on the U.S. Library of Congress’s THOMAS (now Congress.gov) website that same day, and within days the Council for Exceptional Children (CEC) had posted summaries, analyses, and a link to the new bill on its website.

The Internet has become increasingly more valuable as a free resource for legal information. However, it is not a substitute for the law library. For instance, although all state and federal appellate court systems maintain websites and many post their decisions daily, these opinions may date back only 10 years or so and do not include the editorial enhancements contained in the print reporters and subscription databases. The same is true of state and federal statutes available online. The Internet versions of these laws typically do not include annotations.
that direct the legal researcher to regulations implementing them, nor will they provide cases
that interpret them. Although the availability of e-books for legal materials is increasing and
many legal treatises are accessible through electronic subscription databases such as Westlaw,
LexisNexis, and Bloomberg Law, most books and treatises on special education law remain in
print. Additionally, although peer-reviewed law reviews and legal journals are beginning to post
recent issues on the Internet, researchers must be prepared to evaluate the credibility and usefulness
of the host of other information available on the World Wide Web. With any research, but especially legal research, information must be evaluated for its authenticity, objectivity, comprehensiveness, accuracy, and currency. Given the ease of publication on the Internet, applying these criteria to websites as potential resources for legal research is essential. Table 2.10 lists
web addresses for legal research websites, including The People’s Law Library of Maryland’s
Evaluating Legal Websites, which offers a detailed description of the “10 signs of excellence in
a legal website.”

Used appropriately, the Internet offers the researcher valuable and timely access to primary
and secondary resources for use in the research process and offers today’s researcher immediate
access to information needed to stay abreast of developments in the law.

Although various websites for primary and secondary legal resources are mentioned
throughout this chapter, the next section discusses specific legal research tools available via the
Internet.

**INTERNET RESEARCH TOOLS**

**Government Websites**

The U.S. government is a rich source of primary legal authority. Many useful websites for re-
searchers interested in special education law are either sponsored in whole or part by the federal
government or are produced by the federal government for the purpose of providing government
information to citizens.

The Government Printing Office’s FDsys website includes resources (statutes, regulations,
and cases) for all three branches of the federal government. The USA.gov portal includes a
directory of government information by topic, links to all federal agency and state government
websites, and its own search engine for government information.

The United States Courts website provides links to official court websites for opinions
from the U.S. Supreme Court, U.S. Courts of Appeals, and U.S. District Courts. All states pro-
vide links to their judicial departments from their official government websites for access to their appellate court opinions.

The U.S. government also supports access to secondary source research materials through
projects such as the Education Resource Information Center (ERIC), which is an online digital
library sponsored by the Institute of Education Sciences (IES) of the U.S. Department of
Education to support the use of education research. The ERIC database indexes over 1 million journals, books, reports, and other education-related materials by title, author, and keyword, with links to articles available in full-text versions (Table 2.10).

**Legal Directories and Search Engines**

In addition to the many Internet resources recommended throughout this chapter for access to specific primary (federal and state cases, statutes, and regulations) and secondary (dictionaries, encyclopedias, law review articles, etc.) legal resources, legal directories and search engines enable researchers to search both primary and secondary legal resources available on the Internet by topic.

Directories divide websites into categories and subcategories, allowing the researcher to continue clicking to narrow a search. Search engines index pages from the web and enable researchers to search using keywords and advanced searching techniques. Several websites for legal research serve as both a directory and a search engine. Two examples are FindLaw and Justia. Also of note is Google Scholar for searching legal opinions and journal articles (Table 2.10).

**Legal Research Guides**

Legal research guides available on the Internet from academic law libraries can serve as great starting points for identifying key print and online resources on a specific legal topic (e.g., education law, legal research). An excellent example is Georgetown Law Library’s Research Guides website. Law school libraries (e.g., Georgetown and UCLA) are also beginning to create guides for free and low-cost legal research (Table 2.10).

**Information and Advocacy**

Information and advocacy websites can also serve as tools for special education law research. The Center for Parent Information and Resources (CPIR) is a national information and referral center for disabilities and disability-related issues funded by the Office of Special Education Programs (OSEP) of the U.S. Department of Education.

Wrightslaw is a website maintained by Pete and Pam Wright, who teach special education law and advocacy at William and Mary Law School and have co-authored several books on the subject. Wrightslaw’s online advocacy and law libraries link to articles, cases, and other resources on special education law by topic. The website also offers an electronic newsletter and blog. Wrightslaw is a great resource for accessing both primary and secondary special education law resources and for staying abreast of developments in the law (Table 2.10).

**LEGAL RESEARCH STRATEGIES**

This chapter has introduced the essential tools of legal research—primary sources, secondary sources, and finding tools—both in print and online. In addition to knowing the legal resources available, a method for conducting legal research is required. The following three-step model may be useful.

**Step 1: Analyze the Problem**

The first task of the researcher is to analyze the problem and determine the most efficient manner in which to proceed. In the problem-analysis phase, Johnson, Berring, and Woxland (2009) suggest that the researcher (a) think about the answer that is needed for the research problem, (b) determine what it is that the research is to accomplish, and (c) decide what the ideal final product will look like. After analyzing the problem, the researcher must decide what legal sources will be needed to answer that question. Will the research question require information from statutes, regulations, current cases, historical information, an analysis of the law, or some combination of these? Will primary source material (i.e., statements of the law), secondary sources (i.e., interpretations of the law), or both be required? Answers to these questions will help focus the research and indicate where to proceed in the research strategy.

**Step 2: Conduct the Research**

In the second step, the researcher must locate relevant primary source materials. If a statute citation is available, the researcher can find case citations by looking up the statute in the annotated
codes (e.g., U.S.C.A.) and reading the abstracts of relevant cases. A citation to regulations implementing a statute may also be available.

Perhaps the most important element of step 2 is the location of one good case on the subject being researched. Once the researcher has one good case, West’s digests may be accessed using the topic and key numbers in the case’s headnotes. Additional cases may then be located and researched. Citators, such as Shepards® and KeyCite®, may also be used to locate additional case citations and secondary source materials.

If a statute, regulation, or relevant case citation is not available, the researcher should begin with secondary sources (e.g., to locate a law review article on the subject). Law review articles are replete with statutory, regulatory, and case citations. Print looseleaf or online topical services are also useful in locating primary source material. In addition to references to primary sources, the secondary source materials supply the researcher with commentary and analyses of the law.

The ability to move between the sources of law and pull together the relevant information is critical in this stage of research. Analysis of legal issues requires the integration of both primary and secondary resources.

**Step 3: Evaluate the Results**

The final step of the research process is to evaluate the results. Has the researcher obtained enough information? Are the materials current? Is the analysis logically based on the legal sources located? Because the law is constantly changing, it is critically important that legal research be current. Therefore, bringing the research up to date should be a continuous part of the process; sources should be updated as they are being used. It is also a distinct final step in evaluating the results of the research (Olson, 2009).

**SUMMARY**

Law refers to the rules that govern activities in society. Legal research is the process of finding these laws. It involves locating actual statements of the law (i.e., primary sources) as well as explanations and analyses of the law (i.e., secondary sources).

The primary sources include statutes, regulations, and cases. To varying degrees, the primary sources are the controlling authority; that is, these sources are the laws that courts in a given jurisdiction must follow. These sources are available on both the federal and state level.

Finding tools are resources for locating primary sources. The purpose of finding tools is to allow the legal researcher to access the enormous body of primary and secondary sources. Examples of finding tools include the annotated codes (i.e., U.S.C.A. and U.S.C.S.), West’s digests, citators, and ALR annotations.

Secondary materials discuss and analyze the primary sources. Although secondary sources do not have controlling authority, they are useful explanations of the law and may serve as persuasive authority. Books and treatises, law review articles, and looseleaf or online topical services are examples of secondary sources. Electronic databases such as Westlaw and LexisNexis assist the researcher in retrieving both primary and secondary legal resources using full-text keyword searching; in addition, the Internet is becoming increasingly more useful as a legal research tool.

Legal research requires the ability to understand, locate, and use both print and electronic legal resources, including primary sources, secondary sources, and finding tools. The researcher must also approach legal problems with a strategy. Although personal strategies vary, they will often include problem analysis, methods for systematically conducting the research, and an evaluation and updating phase.

**FOR FURTHER INFORMATION**


The following are helpful online how-to guides for legal research:


For more information on online legal research services, visit the following websites:

- Bloomberg Law: [https://www.bloomberglaw.com/](https://www.bloomberglaw.com/)

**REFERENCES**


