

1

Introduction to the American Legal System

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

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

BLACKSTONE (1748)

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 comprised 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 (2009), 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.

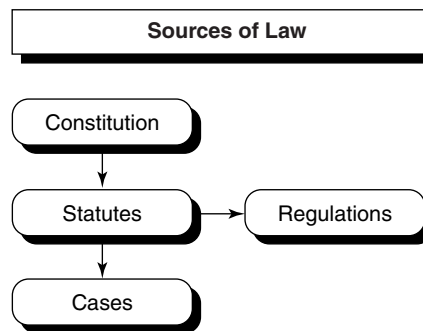
Nevertheless, federal involvement has been an important factor in the progress and growth of education. The government’s role provided under the authority given Congress by the Constitution’s general welfare clause (Article I, Section 8) has, however, been indirect. In the earliest method of indirect 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 the indirect assistance to 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, 2009).

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 law-making 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.

FIGURE 1.1
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.

Federal statutes are authorized by provisions of the Constitution. The specific section of the Constitution that is the basis for special education laws (e.g., the Individuals with Disabilities 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 (Tucker & Goldstein, 1991). 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 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

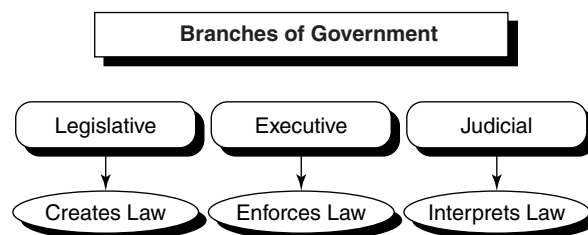


FIGURE 1.2 The Branches of Government

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 comprised of 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. 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 50 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.”

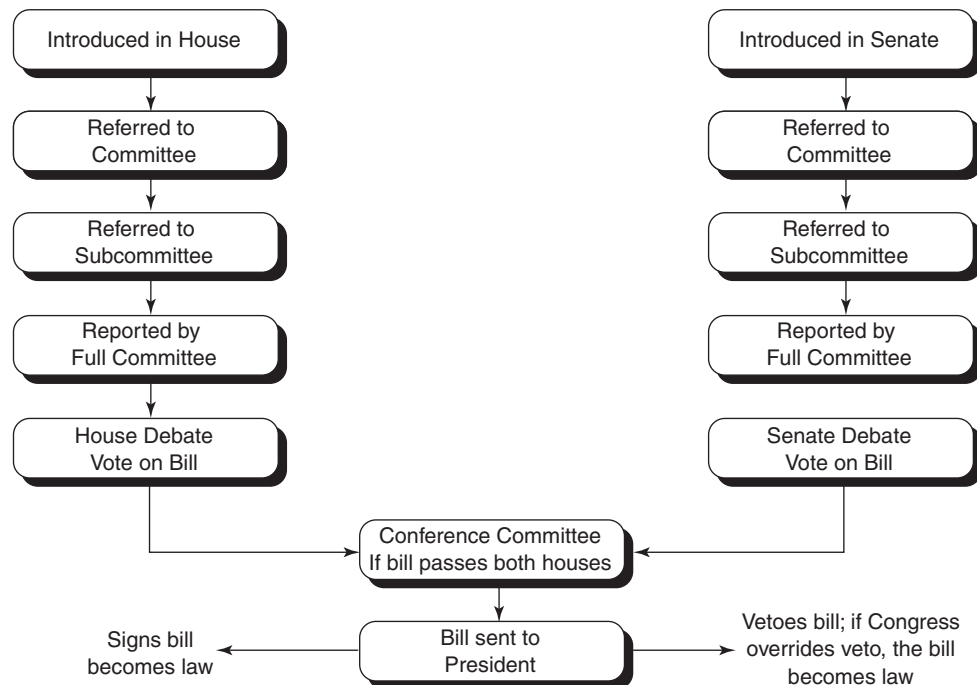


FIGURE 1.3 Creation of Law in the American Legal System

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 [2009]). 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 on the law and its regulations. These judgments may take the form of formal hearings or rulings on written inquiries. The agencies 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.

CASE LAW Case law refers to the published opinions of judges that arise from court cases where they interpret statutes, regulations, and constitutional provisions. The aggregate of published opinions forms a body of jurisprudence distinct from statutes and regulations (Garner, 2009). The American legal system relies heavily on the value of these decisions and the legal precedents they establish. Because only a small fraction of cases results in published opinions, these few cases take on a great deal of importance. If a judicial decision is not published, it typically has no precedential value (Reynolds, 2003).

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, 2009).

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).

In fact, many areas of our law have developed through common law or case law. In special education, this is especially evident. For example, laws involving the discipline of

children with disabilities and the provision of extended school year services to special education students have been initiated by the courts.

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.

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 attorneys could not collect fees under these statutes. According to the high court, because the EAHCA did not contain a provision for attorney’s fees, fees were not available. In a 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*.

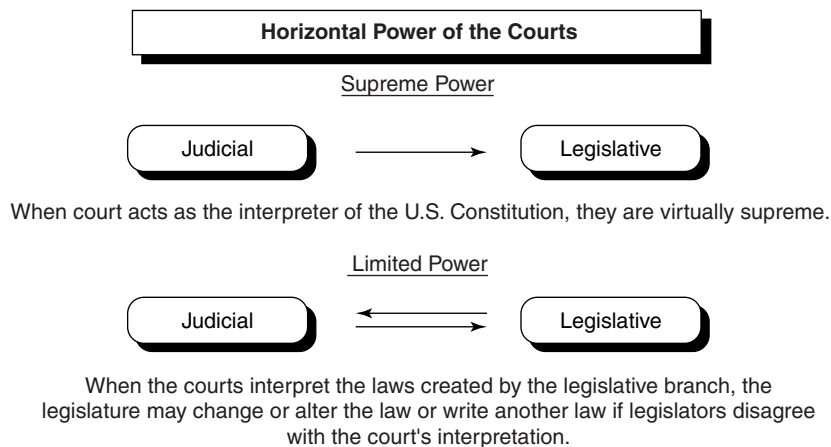
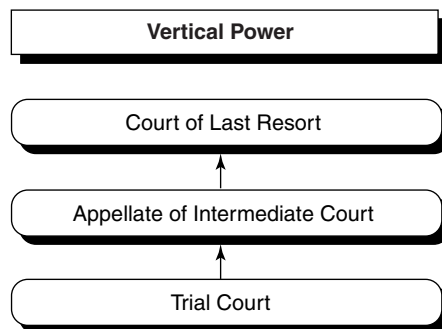


FIGURE 1.4 The Horizontal Power of the Courts

FIGURE 1.5
The Vertical Power
of the Courts



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 the appellate court is binding on all lower courts in its jurisdiction. The losing party in the appellate court may appeal the lower court's decision to the court of last resort. In most jurisdictions, the court of last resort (the highest level of court) is the Supreme Court. Decisions of the Supreme Court are binding on all lower courts, trial and appellate.

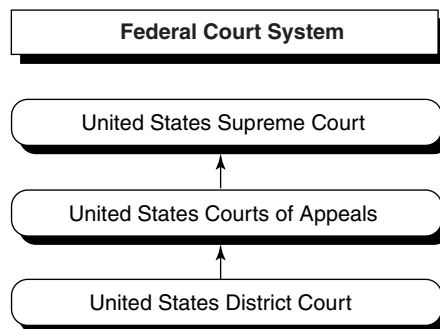
There are 51 separate jurisdictions in the United States: the federal courts and the 50 state courts. While the names of the courts may differ, the equivalent of the generic system described previously can be found in all 51 systems. A line of authority exists within the system, such that the inferior 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 constitutional issues 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).

FIGURE 1.6
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. Matters of dispute are heard by a judge or jury, 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 issue 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. The appeal will most often be to the intermediate appellate court. 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 justices. Typically, the attorneys for each party exchange written briefs. Oral arguments may also be heard. An appellate court

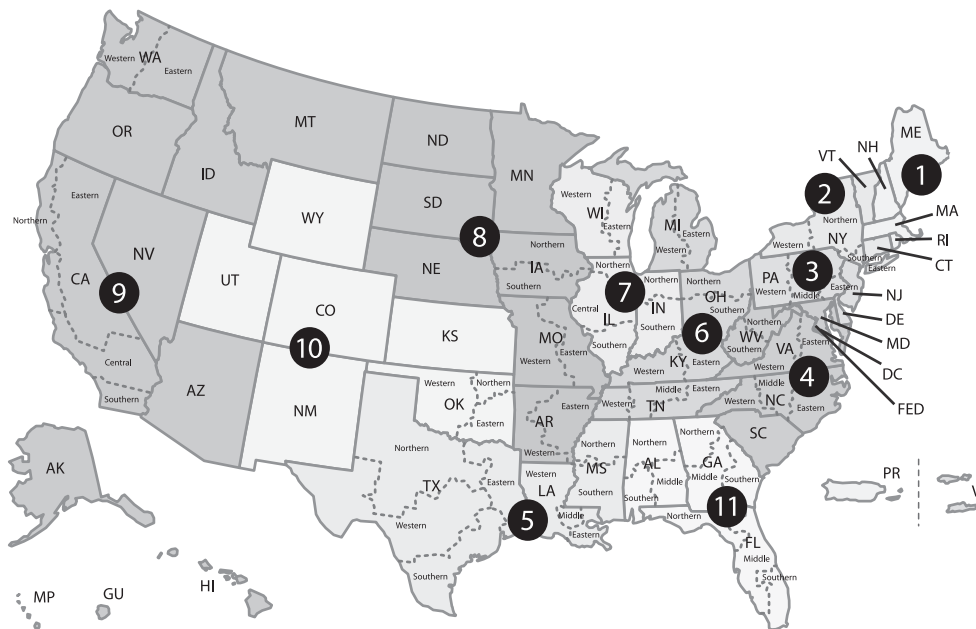


FIGURE 1.7 The Federal Judicial Circuits

will usually consist of three or more judges who will then vote on the disposition of the dispute. Each federal appellate court is comprised 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 12 judges on the appellate court will hear a case. A hearing by the full court is referred to as *en banc* (Garner, 2009).

There are 13 U.S. Courts of Appeals. The First through Eleventh Circuits cover three or more states each, a Twelfth covers the District of Columbia, and the Thirteenth, called the *Federal Circuit*, hears appeals from throughout the country on specialized matters (e.g., patents). The courts of appeal hear cases from trial courts in their jurisdictions. Their decisions become controlling authority in the court's jurisdiction.* 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 has an appellate function. That is, it 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 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, *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.

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 certiorari, usually called a *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 *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 will usually present an important question of constitutional or federal law or 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. Four have been decided since 2005.

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, this decision controls decisions in similar cases in that and other courts. 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 on questions of 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 the Third, Ninth, and Eleventh Circuits.

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. It usually consists of one or two sentences. The rest of the decision, judicial comments, illustrations, speculations, and so on, are referred to as *dicta*, the plural form of *dictum*. The dicta are everything in the opinion except the holding. 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 usually 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 justices who agree with it. 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 reach the ruling. A dissent is a statement of a judge (or judges) 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 in the courts, such as *Mills v. Board of Education* (1972) and *Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* (1972), created 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

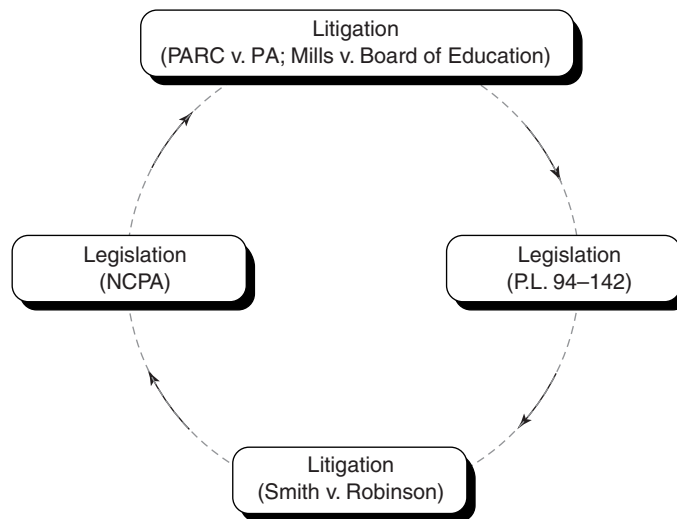


FIGURE 1.8 The Evolution of Law

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 spate of federal litigation to interpret the special education law. Some of this litigation, such as *Smith v. Robinson* (1984), has led to more legislation. In 1986, Congress passed new legislation, the Handicapped Children’s Protection Act (HCPA), to overturn the effects of *Smith v. Robinson*. 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. The interaction of the sources of law is depicted in Figure 1.8.

Summary

Special education is governed by an elaborate and extensive body of statutes, regulations, and court decisions. 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, laws and regulations are interpreted by the courts. 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.