

SPECIAL EDUCATION LAW: LEGAL FRAMEWORK

Perry A. Zirkel
University Professor of Education and Law
Lehigh University

© 2015

Part IA

National Autism Conference
August 2015

LEGAL FRAMEWORK FOR SPECIAL EDUCATION LAW

PERRY A. ZIRKEL

Figure 1 represents the sources of law in the United States. First, as a matter of horizontal levels, the Constitution is the foundation on which legislation and regulations are successively built. The capstone is case law, where adjudicative proceedings find the facts and apply the pertinent levels of law to them. Second, vertically intersecting at this capstone of litigation, our dual system provides for a uniform federal face and, in turn, variations in each state. In most special education cases, the Constitutional provisions of the Fourteenth Amendment's due process and equal protection clauses are merely the underpinnings, whereas the applicable language is in the IDEA (and Sec. 504/ADA) legislation and its regulations and any additions that a given state provides via its own legislation and regulations.

The agency that administers the IDEA is the Office of Special Education Programs (OSEP), which is part of the U.S. Department of Education. The agency that administers Section 504 and its sister civil rights statute, the ADA, in relation to the schools is the Office for Civil Rights, which is also part of the U.S. Department of Education. The state education agency (SEA) is responsible for enforcing the IDEA and any related state special education laws within its boundaries. It has a complaint resolution process (CRP) as an administrative dispute resolution mechanism.

For the alternative of adjudicative resolution of disputes, the three successive levels of the judiciary generally are the 1) trial court, 2) the intermediate, appellate court, and 3) the highest court. For the federal judiciary, uniformity is the key characteristic.

The names (citation abbreviation), approximate number, and the official publication¹ of the decisions for each of these successive levels are as follows:

- 1) district court (“D.”) – approximately 100 – “F. Supp.” and “F. Supp. 2d”
- 2) Circuit Court of Appeals (“Cir.”) – approximately 12 – “F.2d” and “F.3d”
- 3) Supreme Court – 1 – “U.S.”

For the state judiciary, variety is the key characteristic. For example, the trial level in Pennsylvania and New York is the Court of Common Pleas and the Supreme Court respectively, whereas the highest court is called the Supreme Court and the Court of Appeals respectively. Under the IDEA, state courts and federal courts have concurrent jurisdiction; in other words, the party seeking judicial review may choose either system.

The citations for court decisions generally fit this general template:

Parties Names vol. # publication p. # (court year)

Ex. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238 (3d Cir. 1999)

At the trial level, the sequence of the parties names starts with the plaintiff, but in appellate decisions – as the *Ridgewood* example is – the first name is that of the “appellant,” or appealing party.

Additionally, as Figure 2 shows, for the IDEA and its corollary state laws for special education, the general prerequisite for the successive judicial levels is one or two levels of administrative adjudicatory proceedings; all states start with a due process

¹ Other sources – IDELR, Lexis, and Westlaw – contain additional, unpublished court decisions. Moreover, IDELR also includes hearing/review officer decisions, agency (OSEP and OCR) policy interpretations, and other primary source materials.

hearing, and approximately one third of the states have -- per the option provided in the IDEA -- a second review officer stage before the case moves to the state or federal courts.

When the decision is published, it provides guidance in future cases. The higher the level, the more likely that the decision will have such an effect. For example, decisions by the Third Circuit Court of Appeals (abbreviated as "3d Cir.") are binding in Delaware, New Jersey, Pennsylvania (regardless of which of these states the case arose), but they may also be persuasive in the courts in the other circuits.

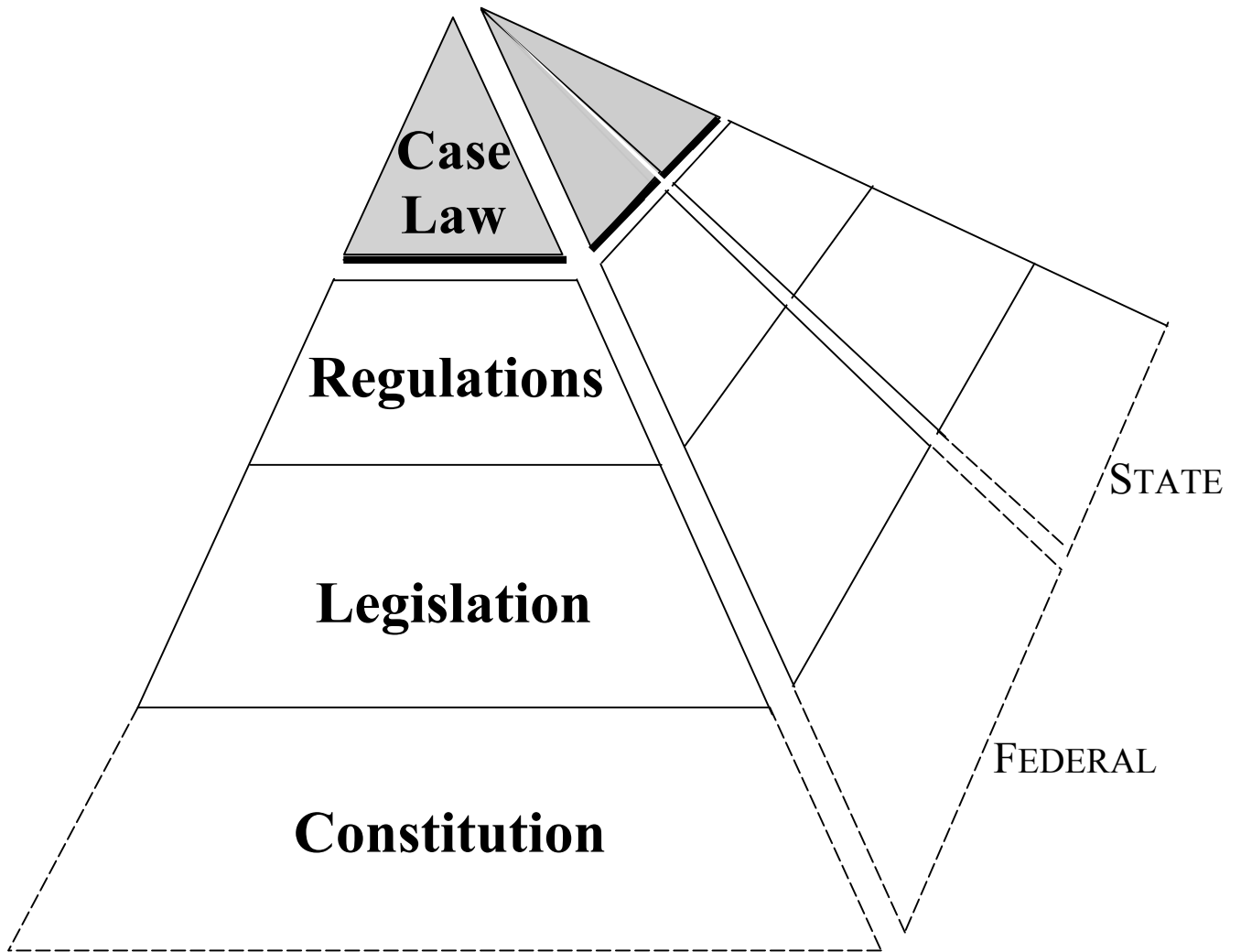


Figure 1: Primary Source of Law

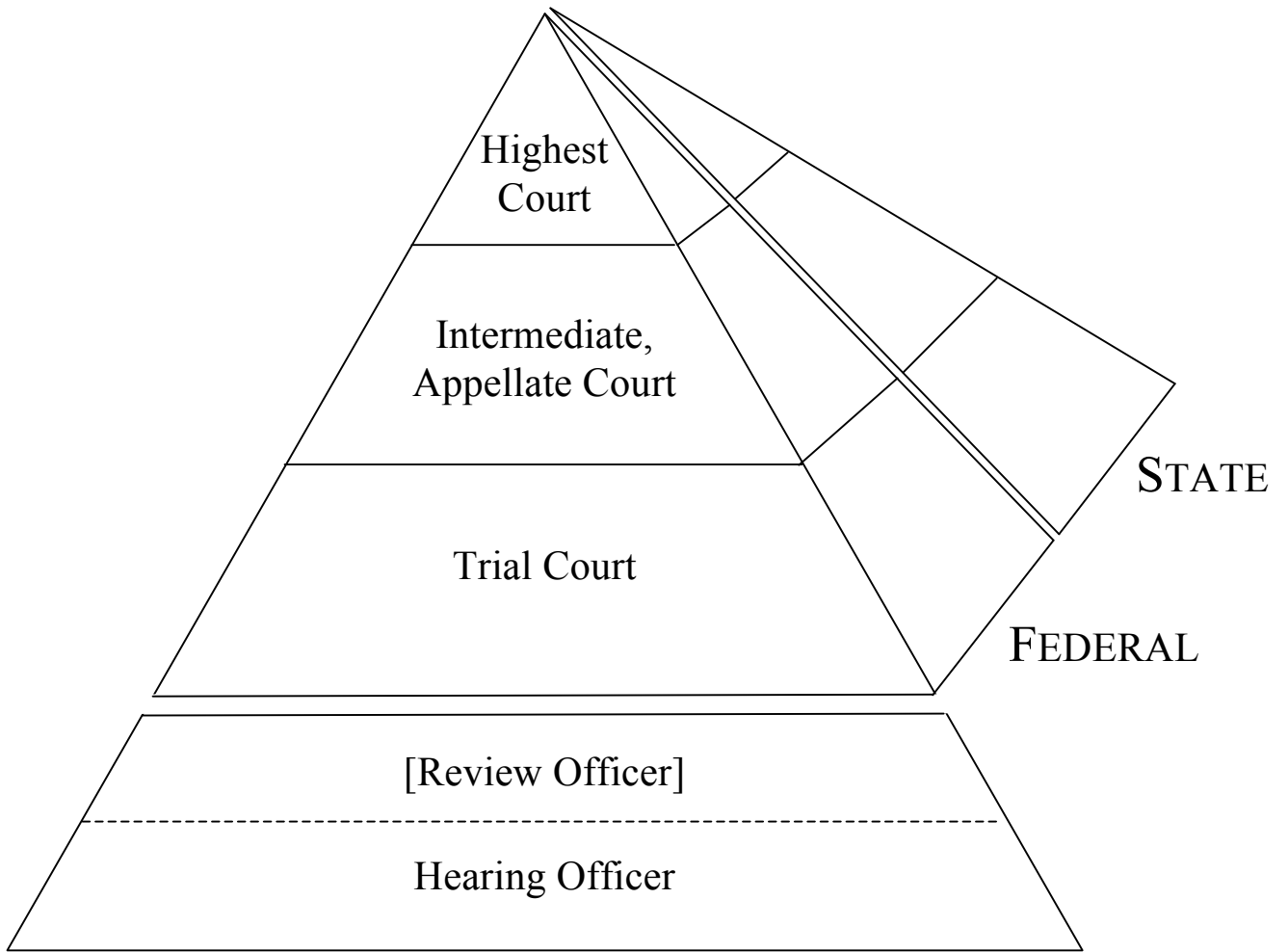


Figure 2: Adjudicative Levels in IDEA Cases