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AFJAGS Podcast:

Episode 84

Special Education Law Legal Assistance

Host: Major Laura Wheat and Major Andrew Woodbury

Guest: Ms. Sharon Ackah

An interview with Ms. Sharon Ackah on special education law and resources that are available across the Department of the Air Force and across the DoD.

[Intro music – The Air Force Song (Instrumental)].

Introduction

Major Andrew Woodbury

Hello listeners. Welcome back to The Air Force Judge Advocate General's School podcast. I'm Major Andrew Woodbury, and I'll be your host for this episode along with Major Laura Wheat.

Today we are excited to host Ms. Sharon Ackah. At the time of our interview, she served as the Chief of the Exceptional Family Member Legal Assistance Policy Branch. She is going to talk to us about an important part of the JAG Corps legal assistance mission, specifically special education law. She is going to dive into the development of this area of law and the resources that are available in the Department of the Air Force and across the Department of Defense.

The Exceptional Family Member Legal Assistance Policy Branch is based out of Joint Base San Antonio-Randolph, in Texas. For the last two and a half years Ms. Ackah and her team have been responsible for building the capability to provide special education legal assistance to our Air Force and Space Force families worldwide. They also provide reachback support to Air Force attorneys, paralegals, and professionals in the field. And expert representation in some of our complex special education legal disputes. And lastly, they develop and execute legal training, outreach and education policy guidance on behalf of the Civil Law and Litigation Directorate, within the Office of The Judge Advocate General.

Welcome to the AFJAGS podcast Ms. Ackah.

Ms. Sharon Ackah:

Thank you Major Woodbury and good morning Major Wheat. So, you introduced the program and, the Air Force Exceptional Family Member Program with regard to education. So I do want to kind of put a quick plug in to say that there is one tiny other component that I won't be talking about, which is our role played by our special education specialist and she sits in the Exceptional Family Member Program Central Cell, I can explain what that is. And is sort of the other arm, if you will, of the support with respect to what the Air Force does on a headquarters level, for supporting the educational needs of our military dependents. I just wanted to give a mention to the fact that the program is, headquarter-wise, a little bit broader than my branch, but happy to dive in and talk to you all about what we do with respect to legal assistance.

Exceptional Family Member Program

Major Wheat:

Right, and on that before we dive into it, though, can you just give an overview of what is the Exceptional Family Member Program just for our non-Air Force listeners out there who might not be tracking?

Ms. Ackah:

Yeah. Yeah, absolutely. Actually, the Exceptional Family Member Program is a mandatory program within the Department of Defense, and it aims to take care of our military dependents who have special needs.

So the program really is interested in protecting and preserving our military dependent's rights to receive their TRICARE benefits and to access the services that they need. Traditionally, the focus has been largely on the medical component of things, and tangentially things like military housing that's appropriate for families and special needs and so forth. I would say probably about three years ago all components of the Exceptional Family Member Program, which I'm going to now call the EFMP program, folks may be more familiar with that acronym, merged into this one umbrella body that we call the EFMP Central cell that sits in San Antonio, Texas, at Randolph Air Force Base.

Within that body you've got the medical assignments, family support, and now our education, let's call it pieces of the program all working together to create certain synergy in the types of services and programs that we provide to our military dependents.

Maj Wheat:

Okay, great. Thank you so much for that background. And so obviously, we're going to focus today on education specifically so can you tell our listeners why is this an important topic?

Ms. Ackah:

Yeah. So you know, speaking globally education is important because we seek to create a society where anyone who has a disability or is differently-abled is able to become an independent member of society to the extent that is possible, right. And so education is equally important to our, you know, children that have disabilities as it is to our children that do not. We want them to be responsible, we want them to be productive, and we want them to be able to contribute from their individual body of skills, assets, characteristics that we can all benefit from as a society. That's taking a broader look. The other thing to know about protecting, preserving the right to education is that it truly goes back to our basic civil rights and the fundamental tenets that were established in cases like *Brown v. Board of Education*, right, that we see education as a key component of a civilized society. And we seek to create inclusion, we seek to create a body within the school where our children can draw upon each other's likes and differences. And so special education really looks to sort of, if you will, level the playing field as best as we can for our children that have disabilities, so that they too can harvest the benefits, if you will, of an education.

Statistics

Maj Wheat:

Okay. So we've established this is obviously important on a global scale as well as in the Air Force. But do we have any statistics to show this is actually a problem or this is actually occurring?

Ms. Ackah:

Yes, absolutely. So let me give you two statistics and stop me if I make this confusing in any way. Let's start with the Air Force statistic. Looking at the Air Force statistic, we have roughly 55,000 family members enrolled in the EFMP program. Now, if you drill down a bit to the school-age children, we're looking at about 25,000 children that are school-aged. Let's go down a little bit further and look at the students whose sponsor have identified them as having an educational need.

So when they fill out the information for the EFMP program, there's a question and it will ask whether or not there's an educational need. So that population that has responded "yes" represents about 10,000 students. Now 10,000 students out of the 55,000 enrollees in the EFMP program gives us about a 20% of the enrolled population in the EFMP reporting that there is an educational need within their family.

So let's hold on in our heads there to the Air Force statistics and let's jump and take a broader view. If we look at the Department of Education statistics for America, so all of our public schools. We know that there are 7.3 million children in the United States that are receiving special education services of some sort. That amounts to about 15% of all of our public school students. And again, this is for the 2021–2022 school year, which is the most recent Department of Education data released, unless they snuck it out on me the last couple days or so. And, we're talking about students between ages three through 21, and we can talk a little bit about why we're focused on that age group, but that's for ages three through 21.

Maj Wheat:

Right, yes Ma'am. And then so for those Air Force numbers, those are only based on self-report?

Ms. Ackah:

Yes. Thank you. Thank you Major Wheat for mentioning that. So here's why that's important. Right, I think I mentioned that we only collect that information, or it's only required, if the service member is leaving the

United States, or if you are military personnel you'll say going OCONUS.

So we're stepping out of the United States and then they're required to provide the children's Individualized Education Program or IEP. But otherwise we'll have (A.) folks that don't report that information, (B.) children that are still seeking eligibility determination. So they want to get tested. I, sitting on the legal assistance side, have received calls from, you know, a family member that says, I think my child has autism. I think my child is dyslexic. What do I do? How do we get them tested? Or, I really feel that my child is struggling in the school and the school will not evaluate them. What can I do about that? Right. So that population is not included. We don't know of them yet in those numbers. So I submit to you that I believe that we actually have a broader area of need than is represented by our numbers, but certainly when we are talking about something as basic as education for our children, the numbers that we do know already suggest a significant problem.

Child Find Requirement

Maj Woodbury:

So, Ms. Ackah if a family realizes that maybe there's an issue that they want to have a child tested or evaluated, how does that What does a family do? What's that process look like?

Ms. Ackah:

Yeah, no, that's a great question. And we receive that question not infrequently. So, let me start by saying there are particular federal laws that govern the field in special education. And as we get a little bit further in the podcast hopefully you'll give me an opportunity to tell you about those. But for now, let me just say this, there is a requirement on the school that the education agency, we're calling them schools right now, to identify children that have special needs. We call it the Child Find requirement.

And so oftentimes the school might notice that a child is, you know, struggling within a certain area or

demonstrating certain behaviors. And that might trigger the evaluation process, right. But sometimes they might be me as a mom, going to the school and saying, you know I'm concerned about A, B or C situation and, and then from there the school should, with the parent's request, begin to evaluate and determine whether this child does in fact qualify for services or not.

So, and, and by the way, so that's the school. That's the parent. But it could be anyone. Anyone can trigger a concern that this particular child has an issue. And that really should lead the school to ding, ding, ding this might be a child that needs to be tested for services or accommodation. So let me give you an example that just popped into my head, a real personal example, but I'm going to roll the dice that my oldest child will never listen to the Air Force JAG podcast.

But I remember when he was in kindergarten. I remember the kindergarten teacher saying to me, yeah, I don't know, he's just it's weird. Like his behavior was just weird. He never seems to be paying attention, but he always knows the answer. If I call on him and I ask him a question he'll know. He'll know what the book says. He noticed that, but it's just like weird because he's just distracted and not paying attention. Right? So, I mean, okay so this is 22 years ago and that didn't mean anything to me except the fact that the teacher needed some training and shouldn't be telling the parent that the child is weird, right?

But fast forward, all these, well a couple of years forward from that. Not all these years later. You know, one might with better training, might have identified both on my part as a parent or that part or the teacher's part that, you know, that my son actually may have been demonstrating some behaviors that could trigger, you know, certain testing and evaluation from the school, right. But both of us missed that until, let's say, I think about third grade. You know when a teacher kind of did that little whisper I could get in trouble for telling you this, but you know, your child displays classic symptoms of ADHD, right? So I say all that to say, know your child,

be on the lookout for any areas of concern that you have or that or that this school is telling you about, or maybe there's a medical diagnosis. Now medical need and an educational need are not the same thing and I don't want to bore you by getting into the difference, but if there is a trigger in your head, ding, ding, ding, I think my child has an issue that might be impacting their educational journey, you can report that to the school, trigger your Child Find requirement, and they should be doing evaluation, eligibility, and testing from that point.

Historical Background

Maj Woodbury:

Well Ms. Ackah obviously there's got to be some legal underpinning and some policy behind this. Could you give us a little bit of historical background and kind of current status of special education law and where that fits in here?

Ms. Ackah:

So when we are speaking specifically about special education cases, I would say the two earliest catalysts were the *Pennsylvania Association for Retarded Children*. We don't use the term retarded anymore, but we were in the 1970s at this time. And the *Mills v. Board of Education* case. *PARC*, the Pennsylvania case, dealt with the exclusion of children with mental retardation from public schools. And that really led us to two key components of education law that are still prevalent today. One is that parent participation in placement decisions is super important, and that parent participation by the way goes back to what I just said. Identifying that there is a child with the need and becoming involved in that child planning process.

The second thing is a meaningful way to resolve disputes. As much as I believe the schools are usually well-intended, sometimes there are disputes that arise between parents and schools with respect to many things like what the education curriculum should look like, what accommodations are needed, where a child will be placed. That all dates back to the *PARC* case.

The *Mills* case involved a practice of suspending, expelling, and excluding children within the D.C. public school system. And so, you know, the idea is that if a child is being put out of school for something that is in fact a manifestation, a result of their disability, then there should be certain protections in place. And we started to see that from the *Mills* case. And today we call those protections Manifestation Determination Reviews. I don't know why I can't say that word. And so we do MDRs to really make sure there isn't a nexus between those two things. Right? If little Sharon is acting a certain way because of a particular disability, then we are guided that the law provides guidance on what we can and cannot do to redirect those behaviors. That was in the *Mills* case.

So after those two cases, Congress decided to take a broader look at what was going on in the field of education. And they did this investigation, which was really quite revealing. It told us that there were less than half of the children who actually needed some sort of assistance, some sort of services, some sort of accommodation, were actually receiving them. There were almost 2 million children that received no educational services at all, but needed education services, and about 2.5 million that received inappropriate services. And another really important thing that we learned from that Congressional study was that parents often didn't feel equipped to advocate for their own children. They didn't know what to do, or what to ask the school for, or how to secure those services for their children.

So I just said a lot. But then the bottom line is, we're in the 1970s and we've got two cases happening, and then we've got some Congressional action happening. And then we come to the mid-1970s, and in 1975 we see the first public law that was called at the time, the **Education for All Handicapped Children Act**.

Really in its simplest terms, it said that all children with disabilities would have a right to an education, and that's a public education. And then there would be a process where we can hold schools accountable for ensuring that they are in fact providing that education.

We morphed that law in 2004 into what we still operate under, which is the **Individuals with Disabilities Education Act**. The biggest difference is that between 1975 and 2004 we increased the focus on accountability and improved outcomes by emphasizing things like reading, early intervention services, using research based instruction, and requiring special education teachers to be highly qualified.

Maj Woodbury:

Ms. Acka now you've given us a general overview of kind of what the state of the law and how it's changed. Can you talk to us a little bit about, maybe how courts have wrestled with some of these legal changes and how they've interpreted them?

Ms. Ackah:

Yeah. Thanks, Major Woodbury. I think that's a great thing to look at this point. So I spent a little bit of time telling you about the evolution of the public law. How did we get to the idea for the Individuals with Disabilities Education Act? And for our listeners out there, you may hear both say, I-D-E-A. Many folks do not, you know, make that into a word like I just did. Or you may hear folks call that IDEA [pronounced "idea"], or you may just hear folks spell that out, Individuals with Disabilities Education Act. Either way we are essentially talking about the federal law that provides: if a state is receiving funds, federal funds under this particular body called IDEA, then they have an obligation to provide children with special education needs with the services and accommodations that they need. And that's essentially all 50 states. Okay. All right.

So moving from there, of course we would see some case law built out of this. And the body of law that we've seen within the Supreme Court ranges from about let's start with 1982 and let's come up to the most recent case, which was the *Perez v. Sturgis* case in 2023. But if I were to highlight for you the ones that I think anyone looking into special education should know about, it would be *Board of Education v. Rowley* in 1982. And what that case did was it gave us a definition for the word "appropriate" and the word "best." And it said that parents are entitled to appropriate services, not the best services. So we are

not, we're not entitled to ask the school for the Harvard of education, right. We are entitled to ask for the services that are appropriate within the confines of our child's particular unique disability that was established in the *Rowley* case.

Now, let's jump forward, to the *Endrew F.* case. And that's what it's referred to. It's the *Endrew F. v. Douglas* case in 2017. And then we went into okay, we got it appropriate and not best. But what does appropriate really mean. And it went on to say that appropriate has to confer a meaningful educational benefit. So it has to be appropriately ambitious within light of the child's circumstances. And also gave us a lot of other what I call checkpoints, right. So when we train attorneys within the Department of the Air Force, we go through *Endrew F.* and we highlight things like the Individualized Education Program must be reasonably calculated to confer progress and if it's not, then that's a problem. And that's something that the parent should highlight.

So 1982 we learned that this appropriate services is what we are looking for and in 2017 the court crystallized for us what appropriate actually means in the *Endrew F.* case.

But in between that time we had several other cases that dealt with things like what are related services? Because some services, as I mentioned earlier, are medical in nature and are not incumbent upon the school. The school doesn't have to provide those services. But there are certain services that are related services that may sound medical, like occupational therapy, speech therapy, and those types of things that the school does in fact have to provide. And other cases dealt with things like tuition reimbursement for private school placement. Sometimes the public school is not providing the services that are needed and the parents will action that due process proceeding that was established in the *PARC* case. Remember I said *PARC* established a means for resolving disputes. We call that a due process case. Okay, So parents may bring that up and this school will then ... I'm sorry. Let me make that a little bit clearer. Parents may want to action the due process case and as part of

their actions in going in that direction they may take their child out of the school and place their child into a private school. And then it comes to question who has to pay for that. And so sometimes, the schools will decide to make that placement on their own, or sometimes this school is going to end up reimbursing the parents because they failed to provide FAPE [Free and Appropriate Education].

So courts have wrestled with some of those types of issues. We've wrestled with placement issues and other in other cases and a number of other things over the years. But if I left you with a takeaway message, it would really be around, the types of obligations that the Supreme Court has made clear lay within the school's domain and that is providing that appropriate education to provide a meaningful benefit to a child that has a disability.

Federal Laws

Maj Woodbury:

I appreciate that overview Ms. Ackah. We talked a lot about the Individuals with Disabilities Education Act. Are there any other Federal laws that touch on this area of practice that would be helpful in illustrating how we address these issues?

Ms. Ackah:

Yes, there are a couple. I think of four main ones. I think a few minutes ago I said something, I said an **Individualized Education Program** or an IEP. And so before I tell you about other laws, I want to make clear that the IEP stems from the Individuals with Disabilities Education Act. It is essentially the vehicle that captures the services and accommodations that will be provided for the child. So once a child is determined to be eligible for services under IDEA then we have this document that's going to be created because everything's got to be in writing. And that was made clear in our case law as well, everything has to be writing. And that written document that I referred to earlier is that IEP. Okay. So all that goes back to IDEA

But sometimes a child only needs accommodation. Now, when that's the case we can accomplish that through a

Section 504 Accommodation Plan, right. We call it a 504 Plan. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against people with disabilities in programs that receive federal financial assistance. And so we use that to get just that accommodation.

Let me go in the weeds a little bit more for you. Here's why. Because under IDEA, the Individuals with Disabilities Education Act, children must fall into one of 13 particular categories in order to qualify for services. And so if the child doesn't fall into those categories, that doesn't mean that we can't help them if they need some accommodation and so 504 would be the route to go to get their accommodation.

Most often, if a child needs an IEP, a unique, individualized, educational, curriculum services, that type of thing, then the accommodations that we might have had in the prior 504 would be added to that IEP and they have one document. I'm talking about two laws, two different purposes there.

Then sometimes we might look to the **Americans with Disabilities Act**, and the ADA of course prohibits discrimination solely on the basis of disabilities in employment, public services and accommodations, right. And so in the school environment we can bring in the ADA provisions. And where we see them most often in our cases is when a child is in a private school, because most of the private schools do not fall under the Individuals with Disabilities Education Act. Remember that they have to be receiving those federal funds in order to be subject to those provisions, right. And so sometimes we say, okay, well private school you're not receiving that, but under the ADA you still cannot discriminate against this child and so therefore. And that's how we established that argument.

FERPA, the **Federal Education Rights and Privacy Act**. I like to say FERPA is our friend. It allows parents to review and correct educational records. And so we often will use a FERPA request, particularly if we are teeing up a

case for that due process proceeding that I mentioned to you earlier.

I would say those are the four, sort of takeaway laws. Of course, there are some state specific, laws, states and state specific rules. And for us in the Air Force, that matters because where we are nationwide, but those are the four major federal ones I would want any parents, to know about when navigating special education challenges.

Maj Woodbury:

When you talked about how most of these laws apply to public education, but then you talked about how the ADA applies to private schools. You mentioned earlier talking about private placement into private schools. How does that interact or what's that relationship there?

Ms. Ackah:

Yeah and I think when I mentioned it earlier I may have said it in a little bit of a confusing way so please allow me to clarify that. Tuition reimbursement is certainly a possible remedy that the courts have dealt with that and most notably in the *Burlington School* case back in 1985. The Supreme Court addressed whether or not tuition reimbursement would be an appropriate remedy for private school placements. And what I'd say about that is it is a possible remedy for private school placement when a school, a public school, is failing to provide a free and appropriate public education to a child with a disability. But there are several steps that need to be taken along the way prior to that private school placement for a parent to you know stand the possibility of prevailing in a court case regarding tuition reimbursement. Though that's something I would caution that our audience look into, certainly talk with their attorney about, if it's a direction that you're thinking of going.

I think when I mentioned it earlier I kind of wrapped it up in saying a few things about due process proceedings. They are not necessarily related. The bottom line is when there is a dispute between school and a parent regarding access to services and accommodations under the

Individuals with Disabilities Education Act, the parents may seek remedies through a due process proceeding.

And, so you know, we within the DAF and I know we're going to talk about the DAF. Oop, I think that was the first time I said that: Department of the Air Force. We seek to reduce the number of cases that get to due process. And when we talk about our, you know what we do, I'll go into that a little bit more, but it certainly is there. It's a remedy. It's established in legislation. It's established in case law. And many parents do find themselves needing to go that route occasionally.

Exceptional Family Member Legal Assistance and Policy Branch

Maj Wheat:

And actually, ma'am, so this is the perfect opportunity. You're talking about how we're going to get to the DAF. And I think we can move on to the Department of the Air Force and what our program looks like today. Can you please explain?

Ms. Ackah:

Yes, ma'am. All right, so Congress recognized the importance of addressing education law matters a few years ago. I would say we probably date back at maybe let's start actually with 2018. In May of 2018, the GAO, Government Accountability Office, published a report, suggesting that there should be greater oversight over the Exceptional Family Member Program.

And so a couple years later, in response to that GAO report and to Congressional testimony from several military families, Congress in the FY 21 (Fiscal Year 21) National Defense Authorization Act required that every branch of service provide legal services by attorneys trained in education law. Now we have all as our sister services we all operationalize that differently. So speaking specifically about the Department of the Air Force, we established in April of 2021.

Wow. Seems like a long time. But that was it. In April of 2021, we established the **Exceptional Family Member Legal Assistance and Policy Branch**. And so that's essentially where I sit. And what we do is focus, as Major Woodbury mentioned in the beginning, on training the field. So we have, 4,500 legal professionals, approximately, across the department in the Air Force and we provide training to all 4,500 of our legal professionals on education, special education, law.

And sometimes you might hear me say, education versus special education. That's because 504 plays a big part of what we do—Section 504 Rehabilitation Act. And that's actually not a special education law. That's a civil rights law. And so sometimes I speak about it a little more broadly and say education law as opposed to special education law.

And that having been said, we provide training for the DAF. And, in doing so we've developed our own internal curriculum. And so, approximately two or three times a year, we'll offer a live virtual platform where our attorneys can tune in either as individuals or as by installation and receive training on various components of how do we practice in this area. And then when our cases come in we offer our attorneys field support. So if they find that there they are, the case provides questions or presents questions that are challenging they will reach out to the branch and we will support them in assisting those clients. We also do a lot of outreach. And in fact, 2024 is a year of outreach for us.

And let me tell you why that's important. We in the Department of the Air Force. I think we just celebrated our 75th birthday. We've been around for a long time and in all that time we've been around, this is a new capability, right? And so our clients need to know that they could go into our legal assistance offices and ask for assistance in this area.

And, I say that our outreach is really about cultural change, and we changing the culture up through our leadership to impress upon our leaders that this is an area that should be, you know, of paramount importance to the DAF. We are changing a culture across. Meaning that we're working with our, our, our partner branches, our families support, our school liaisons, our special needs coordinators, all of those, support agencies to form strong partnerships so that all of us understand when a client should be seeking legal assistance. And we're all working together to provide, a sort of a cohesive approach in services. We're changing culture down, and that's down through all of our legal assistance offices. And, there's a huge lift for our attorneys to incorporate a new practice area into our traditional legal services. And so that requires a degree of cultural change.

And then we're building relationships between the families and our JA community so that there is a trusting relationship there as well. So our outreach is far, its wide, it's broad. We use social media. We use spouse groups. We use command elements. Whatever we can to get our messages across.

Our third priority is policy analysis and guidance. And so because this is new, as I said, we've got to set the left and right parameters. So we are changing our Air Force regulations to incorporate the sort of do's and don'ts within our education law practice and to provide guidance to our attorneys on things like going to IEP meetings. Can they go? If they do go, do they wear a uniform or do they not? How do they not appear to represent the government? And when can we not assist a client because it would represent a conflict of interest between various government agencies. For example, we receive a lot of inquiries about DODEA students, Department of Defense Education Activity. And so those are our students that are usually outside of the United States going to school within the Department of Defense and having some challenges with their IEPs or their accommodations and reaching out to our legal offices and we have to have guidance about how to operate within that space, right, because Department of Defense and Department of Defense, we have some

conflicts there. So, we're doing policy guidance analysis and we do representation in some really complex, really exceptional cases, cases where we believe there's an exigent circumstance, a danger to a child who is perhaps you know eloping out of school and for some reason there's an urgency in dealing with that. Those types of things.

So to summarize all that, in the DAF, we've got the EFM Legal Assistance and Policy Branch providing headquarters level guidance under those four priorities. And we've got every major legal assistance office trained and ready to assist our clients when they come in seeking these types of services.

Maj Wheat:

Okay. Ma'am, I'm so sorry. I have to ask, you mentioned kids eloping out of school. We're not talking about getting married. Is that the official term? What does that mean?

Ms. Ackah:

I love it Major Wheat. No, no, no, our babies are not getting married. So eloping in the context of special education means that the child is a runner essentially. So they're leaving the, it's a flight response with respect to certain disabilities often. And they're leaving the school compound, or they're leaving the classroom, or the place where they should be and essentially running off to somewhere else. And so in some situations that running off is running out and off campus. Right. And so that could be a dangerous situation. And sometimes create a type of case that we want to really address, providing services and accommodations immediately to address that behavior so that that child remains safe.

EFMP Family Vector Resource

Maj Wheat:

I see. Thank you so much for educating me on that. Okay. So you talked about this program that we have in the DAF. What is a good resource that our listeners might potentially be able to use if they want to learn a little bit more.

Ms. Ackah:

Yes, absolutely. All right. So remember way in the beginning of the conversation, I mentioned that we have this body called the EFMP Central Cell. And the EFMP Central Cell has a website that's out facing you can just Google it, **DAF Family Vector**. And on DAF Family Vector you can find not only information about all the legal assistance stuff that we've just talked about, but you can find information about the assignments, and family support, and school liaisons, and overarching information about the EFMP Central Cell. So that that is a great place to go for a wider body of information.

And it's also a good opportunity for me to put a plug for the fact that in the legal assistance section we have a **video library**. It's about maybe 22 videos at this point. And what we do with those is try to take small, tidbits, little bite sized pieces of information, and put it out there for our families. And so, you know, when you are a military spouse, and I'm speaking from firsthand experience, you're busy, right, all the time and sometimes more busy than other times, because you may have a spouse that is, away, deployed downrange, so forth. And so sometimes it's hard, even when you need help, to step out and go seek help somewhere. And so we hope that the videos allow folks on their cell phones or on their own time just to get a lot of the basic questions answered—a lot of the information that we've discussed on this podcast and then you know they might want a little bit more information about the cases or a little bit more information about remedies and special education, or what is a 504?, what's an IEP?, What are the differences? All of those things are available in our video library, so I want to highly recommend that as well.

Maj Wheat:

Right, and for my listeners out there I'll actually put that link in the show notes so that you can go find it easily.

Okay. So Ms. Ackah, I want to shift gears now and talk about who is eligible to get special education legal assistance.

Legal Assistance

Ms. Ackah:

Okay, all right thanks Major Wheat. So anyone eligible for traditional legal assistance can see their installation legal assistance attorneys for special education law. Per regulation, eligible parties include active duty service members, and reservists and guard members on orders, as well as their dependents. Retirees and their dependents are also eligible. But I do want to say though because this has come up a few times within the Department of the Air Force. It's sort of a, we use the term Space A, it's based on availability, right. So you may not necessarily have the availability within the legal assistance office to see all of these various parties. But per our regulation, those are the folks that are eligible for legal assistance.

A couple other things I want to mention to you right here. In the time that we've existed, so since 2021, we've seen almost 350 education cases, regarding education law. Now, understand that our traditional legal assistance generally involves about a 30 minute consultation and is in the area usually of wills or notaries and so forth, which are much less, shall we say, practice area specific or very niche areas of practice, very demanding in terms of the amount of time, and what we are finding is that our education law cases are exponentially more time consuming. And our legal assistance office is taking anywhere, you know, upwards of a 3.5 hours per client consult. And so when we talk about almost 350 cases, we're talking about the Air Force dedicating a tremendous amount of legal assistance resources to assisting our clients, which is fantastic. We've seen some proven results. We've gotten some great testimonials back.

And we're looking forward to continuing to bring this type of relief to our service members. And so here's where I ask our listeners to please if you are listening to this podcast and you are an Air Force service member, or our other Services also have similar programs. I'm describing our Air Force program, but similar programs exist for all of our Sister Services. And so if you're a friend

or an actual service member, please make sure that if we can help within legal assistance, do you find your local legal attorney and seek help. And Major Wheat perhaps you can drop our legal assistance identifier in the notes as well so that our audience can access information.

Maj Wheat:

Absolutely. I can certainly do that. And ma'am, do you also want to talk about what types of services our attorneys do provide with this legal assistance?

Ms. Ackah:

Yes, that's a good question. So first let me say that I talked about the NDAA earlier, the National Defense Authorization Act, and that Congress required our offices to provide attorneys training.

Let me make note of the fact this is, you know, one of the reasons I love what I do and I love working for the Department of the Air Force. Our leadership broadened that mandate, if you will. We were originally required to focus on installations that were considered primary receiving installations for EFMP families. So we had large numbers of folks going to those installations, and we do have some of those. We initially identified 22 installations that fell within that definition. But as a strategy the DAF decided to extend this training and this capability to all of our major commands or MAJCOMs as well as field commands. And so when I use a denominator for, you know, calculating how many trainings we've gone across the DAF and so forth, I'm usually looking at about 78 installations both within and external to the United States. And so it's a very huge undertaking and a demonstration on the part of the Department of the Air Force that there is a strong commitment to addressing these needs for our military families.

So when you come into the office what can you expect? You can expect that our legal assistance attorneys can talk about those eligibility determinations. Remember we said we might have some kids out there that are just trying to figure out if something's wrong and if there should be ... if the conversation should go beyond

the teacher saying this is weird, right? We should go past that and actually figure out whether or not this child might need some support in in some area of their educational journey.

IEPs and 504s

We can also talk about IEPs versus 504s. And a lot of times parents are confused about that and they want to know which is better or what the protections are under each one of those federal laws. And so that I bundle all that into sort of advice and counsel, all right. We can also address issues of IEP noncompliance. And so this is probably where we see the most of our clients. Is when a family has a PCS, permanent change of station. So they're leaving one base and going to another base, and in the new location, which is usually a new state, they are not receiving what they consider to be similar or comparable services. That's my opportunity to tell you that the law does provide that when a child moves from one state to the next they should be receiving quote, unquote comparable services until that new state evaluates and determines that something is different, there's a change in justification and changing the services that are being provided. So our attorneys can help with those things.

They can help with getting those IEP meetings set up if the if the parents are struggling with that, which is often the case, and also asserting the parent's right to those comparable services and effective, I want to say probably from about October of 2022, don't quote me on the date, but we now are able to attend IEP meetings with our clients subject to SJA approval. So you go into the legal office and you're having a challenge and you want some legal support there, talk to the attorney about that as a strategy. And together, attorney and client are going to determine whether or not this is a case where it makes sense for our attorneys to actually attend these meetings. That's a huge, huge, huge policy shift within the Department of the Air Force and a great benefit to our clients, where the case does seem to make sense for attorneys to attend.

Assessments

Understanding assessments. Assessments are complicated. These are the documents that are done during the evaluation process and will determine the types of services that our clients will need. We don't specialize in understanding assessments. We're not psychiatrists. We're not psychologists. Our attorneys are not going to dissect those, but they can talk to a parent about how those assessments should translate into the IEP. In other words, the assessments identify a weakness in verbal processing or something and we don't see a goal in an IEP that seems to match up, right. We can flag and an issue spot, if you will, some of those things that the client then should discuss with the IEP team.

Discipline Cases

Discipline cases. We saw a lot of these, particularly during COVID, maybe less so now, but they still come up. So think about that MDR that I mentioned when we talked about case law and we talked about that *Mills* case in D.C. And so, when a child is being removed from the school system we can often assist with asserting the right to a Manifestation Determination Review and some of the tricky things that are involved in that. So for example, an MDR has a certain, you know, time requirements. If you're going to remove a child for more than ten days, there's certain actions that have to be taken.

Some things that constitute removal. What are those? Is it sending the child to sit outside the classroom, or sending a child to the principal's office or the counselor? Right. So our attorneys can help you figure out what those removals actually look like and whether that triggers a Manifestation Determination Review and a disciplinary case.

Court Proceedings

We talked about tuition reimbursement. We can counsel on that. And big caveat, we do not do due process proceedings. We're not allowed to represent our clients in court. We can help to tee up that process

with litigation support, utilizing a FERPA request, getting records, reviewing records, assisting attorneys and understanding the burden. I'm sorry, assisting our clients and understanding things like who will bear the burden of proof in various situations and so forth. But we do not attend due process proceedings or other court proceedings.

Guardianships/Special Needs Trusts

And lastly, I just want to mention a lot of times our EFM clients come in and their questions are about guardianships or special needs trusts. The number of those that we have is much higher than the 350 that I mentioned for education. And a lot of times a guardianship will include an education component, because as children arrive at the age of 18 parents need to have something in place to still have a place at the table at that IEP meeting or that 504 meeting.

And so, sometimes they come in talking about a guardianship specifically for that reason or in general. And our attorneys can counsel on the nexus between the education component and that guardianship request.

So I would say that that's a pretty exhaustive list of the areas in which our attorneys can assist. And if a client has a question, go in speak to legal assistance. Maybe there's something that I haven't mentioned that we can certainly assist with. And maybe it's something that is outside of our purview, but we might have other mechanisms of assisting, such as utilizing the, military, the ABA's military pro-bono program based on qualifications and things like that. So always, always, always. I encourage that families having challenges, legal challenges, navigating education, should go seek legal counsel.

Maj Wheat:

And ma'am you mentioned SJA. So just for my listeners out there who aren't familiar, that's a Staff Judge Advocate. That's essentially the lead attorney in a legal office. So the legal assistance attorney's boss is the SJA.

Ms. Ackah:

Yes, absolutely. Thanks again. I'm getting lost in my own alphabet soup of acronyms that I mentioned. But yes, the lead attorney.

Closing

Maj Wheat:

Thank you so much for providing the overview of what we do in the Air Force. You provided some really great resources today. Before we close it out, do you have any you know closing remarks, takeaways, thoughts for our listeners?

Ms. Ackah:

Major Woodbury, Major Wheat, I want to thank you for the opportunity to highlight the work that we're doing in education law as part of the EFMP, our support to EFMP families. As a military spouse, as a mom, as an attorney, I can't underscore the importance of what we're doing here for our families and the impact that it's making against is beginning to really, really resonate. You know, we've come a far way. We've helped a lot of folks and yet we have a far way to go. And so we're continuing to build our program. We're continuing to look forward to assisting our service members and saving them the emotional, financial, overall resource burden that often is associated with challenges in this area. So thank you again for bringing focus to this.

Maj Wheat:

Well, ma'am, thank you so much. It's been a privilege and a pleasure to have you on the podcast.

Ms. Ackah:

Absolutely. The pleasure is all mine. You guys enjoy the rest of your day. And thank you again.

Maj Wheat:

All right, listeners. And with that, that's all we have for you today. This podcast is in recess.

Post Show

Maj Woodbury:

A quick post-show note since the recording of this episode, Ms. Sharon Ackah has moved to an exciting new position is no longer part of our JAG Corps team. We congratulate her on the great work she's done in building the education law program. The Air Force JAG Corps still has a world class team dedicated to helping exceptional family members, and I've include resources in the show notes to help eligible beneficiaries. Disclaimer:

Nothing from this show should be construed as legal advice. Please consult an attorney for any legal issues. Nothing in this show is endorsed by the federal government, the Air Force, or any of its components. All content and opinions are those of its guests and host.

Are you interested in joining the Air Force JAG Corps? You can learn more information at airforce.com/jag. That's J-A-G. You may also call us at 1-800-JAG-USAF. That's 1-800-524-8723. Or you can email us at af.jag.recruiting@us.af.mil. That's M-I-L.

Glossary

- **ABA:** American Bar Association
- **ADA:** Americans with Disabilities Act
- **ADHD:** Attention-Deficit/Hyperactivity Disorder
- **AFJAGS:** Air Force Judge Advocate General's School
- **DAF:** Department of the Air Force
- **DODEA:** Department of Defense Education Activity
- **EFMP:** Exceptional Family Members Program
- **FAPE:** Free and Appropriate Education
- **FERPA:** Family Educational Rights and Privacy Act
- **FY:** Fiscal Year
- **GAO:** Government Accountability Office
- **IDEA:** Individuals with Disabilities Education Act
- **IEP:** Individualized Education Program
- **JA:** judge advocate
- **JAG:** judge advocate general
- **MAJCOM:** major command
- **MDR:** Manifestation Determination Review
- **NDAA:** National Defense Authorization Act
- **OCONUS:** Outside the Continental United States
- **PARC:** Pennsylvania Association for Retarded Children*
- **PCS:** permanent change of station
- **SJA:** staff judge advocate

*During the time of the *PARC v. Pennsylvania* case, professionals, government officials, and lawyers used to consider phrases like “mentally retarded” an appropriate way to classify people with some disabilities. Today, phrases such as “intellectual disabilities” and “developmental disabilities” have become the preferred terminology in medical and legal fields. PARC changed its name to The Arc in 1992.

Show Notes

Websites

EFMP Central Cell Family Vector Website:

<https://daffamilyvector.us.af.mil>

The **DAF Family Vector Video Library** includes a section of videos on Special Education Law available here: <https://daffamilyvector.us.af.mil/MemberSite/Content?TaxonId=1041>

Eligible military legal assistance beneficiaries can locate the closest **legal assistance office** using the U.S. Armed Forces Legal Assistance Locator: <https://legalassistance.law.af.mil>.

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