

## RELEVANT DISABILITY LAWS

There are two statutes that govern the provision of services to students with disabilities – the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. While each provide for the provision of a Free Appropriate Public Education in the Least Restrictive Environment, the mechanisms by which such services are provided varies depending on the applicable statute.

### IDEA:

The Individuals with Disabilities Education Act (IDEA) is the main federal statute that authorizes federal aid for the education of children with disabilities. The stated purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.” 20 U.S.C. § 1400 (internal numbering omitted)

This purpose is achieved through detailed due process provisions to ensure parental rights and participation, as well as a federal funding scheme to ensure that each child with a disability receives a “free appropriate public education” in the “least restrictive environment.”

### Section 504:

Section 504 of the Rehabilitation Act is a federal civil rights law that prohibits discrimination by school districts receiving federal financial assistance against persons with disabilities. Included in the U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a “free appropriate public education” in the “least restrictive environment.”

The chart below outlines the key components of each statute.

## IDEA vs. Section 504

	IDEA	SECTION 504
The Applicable Statute	The Individuals with Disabilities Education Act  20 U.S.C. § 1400, et. seq 34 C.F.R. Part 300	Section 504 of the Rehabilitation Act of 1973  29 U.S.C. 794 34 C.F.R. Part 104

Purpose	An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities.	A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.
Who is Eligible	<p>Children ages 3-21 who are determined by a multidisciplinary team to be eligible within one or more of 13 specific disability categories listed in the IDEA and who need special education and related services.</p> <p>The disability categories include: autism, deafness, deaf-blindness, hearing impairments, mental retardation, multiple disabilities, orthopedic impairments, other health impairments, serious emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, and visual impairments</p> <p><b>34 C.F.R. 300.8</b></p>	<p>Any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment.</p> <p>Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.</p> <p><b>34 C.F.R. 104.3</b></p> <p>Section 504 has a broader definition of a disability than IDEA. A child who doesn't qualify for an IEP might still be eligible for a 504 plan.</p>
Child Find Obligation	<p>The state must have in effect policies and procedures to ensure that all children residing in the state who are in need of special education and related services, are identified, locate, and evaluated.</p> <p><b>34 C.F.R. 300.111</b></p>	<p>The school district must annually:</p> <ul style="list-style-type: none"> <li>Undertake to identify and locate every qualified handicapped person residing in the jurisdiction who is not receiving a public education</li> <li>Take appropriate steps to notify handicapped persons and their parents or guardians of the district's responsibilities to provide FAPE</li> </ul> <p><b>35 C.F.R. 104.32</b></p>
Controlling Document	Individual Education Program (IEP)	Section 504 Plan
Evaluation and Placement Procedures	<ul style="list-style-type: none"> <li>Requires that the child be fully and comprehensively evaluated in all areas related to the suspected disability</li> </ul>	<ul style="list-style-type: none"> <li>The District is required to establish procedures for evaluating children in need of services or believed to be in</li> </ul>

	<ul style="list-style-type: none"> <li>• All information provided by the parent must be considered</li> </ul> <p><b>34 CFR 300.304</b></p> <ul style="list-style-type: none"> <li>• Informed and written parental consent is required for all evaluations and reevaluations</li> <li>• Informed and written consent is required prior to the initial provision of special education services</li> </ul> <p><b>34 CFR 300.300</b></p> <ul style="list-style-type: none"> <li>• Requires a reevaluation of the child at least once every three years (unless waived), or if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.</li> </ul> <p><b>34 C.F.R. 300.303</b></p>	<p>need of services, ensuring that evaluation materials have been validated and are administered by trained personnel</p> <ul style="list-style-type: none"> <li>• In interpreting evaluation data and making placement decisions, the district shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, social or cultural background and adaptive behaviors. All information obtained must be documented and carefully considered.</li> <li>• Does not require written consent of the parents, only that the parents are notified.</li> <li>• Requires "periodic" reevaluation.</li> <li>• Requires reevaluation before a significant change in placement.</li> </ul> <p><b>34 C.F.R. 104.35</b></p>
Independent Education Evaluation (IEE)	<p>Provides for independent evaluation at the district's expense if parents disagree with the evaluation conducted by the district.</p> <p><b>34 CFR 300.502</b></p>	<p>No provisions made for independent evaluation at school's expense.</p>
Who Creates the Program / Plan	<p>An IEP is created by an IEP team that must include:</p> <ul style="list-style-type: none"> <li>• The child's parent</li> <li>• At least one of the child's general education teachers</li> <li>• At least one special education teacher</li> <li>• An individual who can interpret evaluation results</li> </ul>	<p>A 504 plan is created by a team of people who are "knowledgeable about the child, the meaning of the evaluation data, and the placement options."</p> <p><b>34 C.F.R. 35</b></p> <p>This might include:</p> <ul style="list-style-type: none"> <li>• The child's parent</li> </ul>

	<ul style="list-style-type: none"> <li>• A district representative with authority over special education services</li> <li>• Other individuals with knowledge or expertise about the child</li> <li>• The child, if appropriate</li> </ul> <p>The presence of certain team members might be able to be waived.</p> <p><b>34 C.F.R. 300.321</b></p>	<ul style="list-style-type: none"> <li>• General and special education teachers</li> <li>• The school principal</li> <li>• The school’s section 504 coordinator</li> <li>• The child, if appropriate</li> </ul>
<p>What’s in the Program / Plan</p>	<p>The IEP sets learning goals for a child and describes the services the school will give her. It is a written document that must include:</p> <ul style="list-style-type: none"> <li>• The child’s present levels of academic and functional performance—how s/he is currently doing in school</li> <li>• Annual education goals for the child and how the school will track her progress</li> <li>• The services the child will get—this may include special education, related, supplementary and extended school year services</li> <li>• The timing of services—when they start, how often they occur and how long they last</li> <li>• Any accommodations—changes to the child’s learning environment</li> <li>• Any modifications—changes to what the child is expected to learn or know</li> <li>• How the child will participate in standardized tests</li> <li>• How the child will be included in general education classes and school activities</li> </ul> <p><b>34 C.F.R. 300.320</b></p>	<p>There is no standard 504 plan. Unlike an IEP, a 504 plan does not have to be a written document.</p> <p>A 504 plan generally includes the following:</p> <ul style="list-style-type: none"> <li>• Specific accommodations, supports or services for the child</li> <li>• Names of who will provide each service</li> <li>• Name of the person responsible for ensuring the plan is implemented</li> </ul>
<p>Free Appropriate Public</p>	<ul style="list-style-type: none"> <li>• The provision of special education and related services that:</li> </ul>	<ul style="list-style-type: none"> <li>• The district must provide a free appropriate public education to each qualified</li> </ul>

<p>Education (FAPE)</p>	<ul style="list-style-type: none"> <li>• Are provided at public expense, under public supervision and direction, and without charge,</li> <li>• Meet the standards of the State Education Agency</li> <li>• Are provided in conformity with an IEP that meets the standards set forth in the statute.</li> </ul> <p>34 C.F.R. 300.13</p>	<p>handicapped person, regardless of the nature or severity of the person's handicap.</p> <ul style="list-style-type: none"> <li>• An appropriate education consists of the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met</li> </ul> <p>34 C.F.R. 104.33</p>
<p>Least Restrictive Environment (LRE)</p>	<ul style="list-style-type: none"> <li>• To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are nondisabled</li> <li>• Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</li> </ul> <p>34 C.F.R. 300.114</p>	<ul style="list-style-type: none"> <li>• Students must be educated with students who are not handicapped to the maximum extent appropriate to the needs of the handicapped person.</li> <li>• A student must be placed in the regular educational environment unless it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily</li> </ul> <p>34 C.F.R. 104.34</p>
<p>Discipline</p>	<ul style="list-style-type: none"> <li>• For all disciplinary actions removing a student from school for 10 days or more (or shorter-term disciplinary actions that add up to 10 days if there's a pattern or practice), the district must hold a manifestation determination review to</li> </ul>	<ul style="list-style-type: none"> <li>• While the regulations themselves are silent with respect to discipline, the Office of Civil Rights (OCR) has held that removal from school for 10 days or more requires a determination of whether the behavior is a</li> </ul>

	<p>determine if the behavior in question was a manifestation of the disability.</p> <ul style="list-style-type: none"> <li>• Behavior is a manifestation if the conduct in question (1) was caused by, or had a direct and substantial relationship to, the child’s disability, or (2) was the direct result of the district’s failure to implement the IEP.</li> <li>• If the behavior is a manifestation, the child should not be disciplined further (some exception apply for seriously dangerous behavior, weapons, and drugs)</li> <li>• If the behavior is not a manifestation, the child may be disciplined, but must continue to receive FAPE.</li> </ul> <p>34 C.F.R. 300.530</p>	<p>manifestation of the child’s disability.</p>
<p>Funding</p>	<ul style="list-style-type: none"> <li>• Students receive these services at no charge.</li> <li>• States and school districts receive additional funding for eligible students.</li> </ul>	<ul style="list-style-type: none"> <li>• Students receive these services at no charge.</li> <li>• States do not receive extra funding for eligible students, but the federal government can take funding away from programs (including schools) that don’t comply.</li> <li>• IDEA funds can’t be used to serve students with 504 plans, unless those students have also been found eligible for IDEA services</li> </ul>