



|| COMPARISON OF THE IDEA, SECTION 504, AND THE ADA

SECTION 1. GENERAL PROVISIONS

IDEA	504	ADA
<p>The Individuals with Disabilities Education Act (IDEA) is a federal education law that provides grants to assist states in providing special education services.</p> <p>Parts A and B of the IDEA affect public schools. Participation by states is voluntary. Once a state agrees to participate it must ensure that all students with disabilities in the state receive a free appropriate public education.</p> <p>Failure to meet IDEA requirements results in a loss of IDEA funds to the state.</p> <p>Part C provides services for infants and toddlers and is administered by the Department of Health and Welfare in Idaho.</p> <p>Part D provides funds for research, personnel development, and other discretionary programs.</p>	<p>The Rehabilitation Act of 1973 is a comprehensive federal law that provides for state vocational rehabilitation services, commissions for the blind, independent living centers, a National Council on Disability, and a client assistance program.</p> <p>Section 504 is a portion of the Rehabilitation Act that prohibits discrimination on the basis of disability. Individuals with disabilities cannot be excluded from or denied the benefits of any program or activity receiving federal financial assistance.</p> <p>Section 504 is mandatory. No additional funding is provided. Failure to comply could result in potential loss of all federal funds.</p>	<p>The Americans with Disabilities Act (ADA) is a broad civil rights law that was passed in 1990.</p> <p>Titles I and II affect public schools. Title I prohibits discrimination in employment if an organization employs 15 or more individuals. Title II deals with public services, including schools.</p> <p>Title III protects the rights of individuals with disabilities in privately operated public settings (such as day cares, restaurants, and private schools, as long as they are not religious-operated). Title IV requires accessible telecommunications. Title V includes miscellaneous provisions.</p> <p>Participation is mandatory. No funding is provided. Failure to comply could result in the award of compensatory and punitive damages.</p>

SECTION 2. STUDENT ELIGIBILITY

IDEA	504	ADA
<p>Children ages 3 through 21 are eligible for Part B if they have a disability <i>and</i> need special education.</p> <p>The law lists specific disability categories including autism, deaf-blindness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, orthopedic impairment, health impairment, speech or language impairment, learning disability, traumatic brain injury, and visual impairment. The law does not require the district to label a student by category of disability to provide services.</p> <p>A team of qualified professionals and the parent (the evaluation team) determines eligibility. Infants and toddlers, birth through 2 years of age, with development delays are eligible under Part C of the IDEA.</p>	<p>504 automatically protects children who are eligible for Part B.</p> <p>In addition, all age ranges of individuals who have, have had, or are regarded as having a physical or mental impairment that substantially limits a major life activity are protected. Generally, districts need to be concerned only with students who currently have a disability.</p> <p>Life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself and performing manual tasks. The life activity that is affected does not have to be learning for a student to have 504 protections at school. To be protected, an individual must be “otherwise qualified” for the program or activity.</p> <p>Eligibility is determined by a team of people (it is a best practice to include parents on the team, but it is not required).</p>	<p>Same as 504.</p> <p>A public entity may not impose eligibility criteria for participation in its programs or activities that screen out, or tend to screen out, individuals with disabilities, unless necessary for legitimate safety reasons.</p>

SECTION 3. EDUCATIONAL RIGHTS

IDEA	504	ADA
<p>Eligible students are entitled to a free appropriate public education (FAPE). FAPE includes special education and related services.</p> <p><i>Free</i> means at public expense. <i>Appropriate</i> means in conformance with an IEP that meets legal requirements. <i>Public</i> means provided under public direction and supervision. <i>Education</i> includes preschool, elementary, and secondary, but not higher education.</p> <p>FAPE is further defined by case law as an IEP that is developed in accordance with the law’s procedures and that is reasonably calculated to ensure educational benefit. The benefit must be more than trivial.</p> <p>The district must provide related services that are necessary to assist the student to benefit from special education. If a student does not need special education, he or she is not entitled to related services. In Idaho, speech/language therapy is defined as special education and can be a stand-alone service.</p>	<p>Many people think 504 only requires the provision of reasonable accommodations. This is true in employment and higher education, but not in public schools (elementary and secondary).</p> <p>Eligible preschool, elementary, and secondary students are entitled to FAPE. FAPE is defined by 504 as regular <i>or</i> special education <i>and</i> related aids and services to meet an eligible student’s needs as adequately as the needs of students without disabilities are met.</p> <p>In practice, if a student requires special education, he or she is usually served under the IDEA.</p> <p>504 requires that a plan be implemented for eligible students. The plan does not have to be written, but districts are advised to use a written accommodation plan to document the accommodations that have been determined necessary and will be provided.</p> <p>The provision of related services may be required even though a student does not need special education.</p>	<p>The ADA does not require the provision of FAPE to eligible students.</p> <p>However, the ADA provides a layer of protections in combination with Section 504 actions.</p> <p>Title II of the ADA includes a general provision that prohibits discrimination and denial of participation on the basis of disability. It also provides for equality of opportunity to participate in or benefit from programs and services.</p> <p>The ADA requires reasonable accommodations for students with disabilities.</p>

SECTION 4. EVALUATIONS

IDEA	504	ADA
<p>Written notice and consent are required before an evaluation or reevaluation is conducted. Reevaluations are required every 3 years.</p> <p>A parent and/or adult student can obtain an independent educational evaluation at public expense if he or she disagrees with the district's evaluation, unless the district goes to a due process hearing.</p>	<p>Notice is required but consent is not. Consent is a good practice. Periodic reevaluations are required; 3 years is a best practice.</p> <p>There are no provisions for independent educational evaluations.</p>	<p>The ADA does not delineate specific evaluation requirements but reasonable accommodations must be provided for entrance exams.</p>

SECTION 5. LEAST RESTRICTIVE ENVIRONMENT

IDEA	504	ADA
<p>Districts must ensure that a continuum of alternative placements exists for students with disabilities. A student cannot be removed from the general education classroom or curriculum unless the nature or severity of his or her disability is such that the student cannot be satisfactorily educated in the general education classroom with supplementary aids and services.</p> <p>Placement decisions must be made annually by the IEP team.</p>	<p>504 has the same requirements for a continuum of alternative placements as the IDEA and presumes that students are educated in the general education classroom if possible.</p> <p>504 does not mention the general education curriculum.</p> <p>Placement decisions are made annually by a group of knowledgeable people who draw on information from a variety of sources.</p>	<p>Individuals with disabilities must be integrated to the maximum extent appropriate. Separate programs are permitted where necessary to ensure equal opportunity, but exclusion from the regular program is prohibited.</p> <p>Reasonable accommodations may be required in the regular program even when a special program for individuals with disabilities is provided. The existence of a special program may affect the extent of accommodations that must be provided in the regular program.</p>

SECTION 6. PROCEDURAL SAFEGUARDS

IDEA	504	ADA
<p>A parent and an adult student must receive notice when the district proposes or refuses to initiate or change identification, evaluation, placement, or the provision of FAPE. The notice, which must be written, includes specific components. It is required for any change in placement.</p> <p>Written consent is required for all assessments and initial placement in special education.</p> <p>Elaborate and complex procedures are set forth in the law for the discipline of students with disabilities. A student cannot be expelled for behavior that is a manifestation of his or her disability. Educational services for a student who is expelled for behavior that is not a manifestation of his or her disability may <i>not</i> cease.</p>	<p>A parent must receive notice when the district proposes or refuses to initiate or change identification, evaluation, placement, or the provision of FAPE. The notice does not have to be written, but it is a good practice. Notice is only required for significant changes in placement. It is a good practice to provide notice for all changes in placement.</p> <p>Expulsion and long-term or repeated suspensions are considered significant changes in placement and invoke specific procedural safeguards. A student cannot be expelled for behavior that is a manifestation of his or her disability. Educational services for a student who is expelled for behavior that is not a manifestation of his or her disability may cease.</p>	<p>The ADA does not delineate specific procedural safeguards.</p>

SECTION 7. RESOLVING DISAGREEMENTS

IDEA	504	ADA
<p>No provisions for a compliance coordinator or a grievance procedure.</p> <p>A parent and/or adult student or the district may request mediation. It is voluntary and provided by the State Department of Education (SDE).</p> <p>Any individual may file a formal complaint with the SDE.</p> <p>A parent and/or adult student or the district may request a due process hearing, which has a 45-day time line for issuance of a decision. Decisions may be appealed to civil court. Administrative remedies must be exhausted before filing a suit in civil court.</p>	<p>If a district employs more than 15 people it must designate a 504 compliance coordinator and have a grievance procedure for parents, students, and staff.</p> <p>No provisions regarding mediation.</p> <p>Formal complaints may be filed with the Office for Civil Rights (OCR).</p> <p>Districts must have a hearing procedure, which can be the same as the IDEA procedure but does not have to be.</p> <p>Parents can file a case in civil court without exhausting administrative remedies.</p>	<p>Internal grievance procedures are required for entities that employ more than 50 people.</p> <p>No provisions for mediation.</p> <p>Complaints can be filed with the OCR or the Department of Justice. The OCR investigates complaints under 504 and the ADA.</p> <p>No administrative hearing provision exists under the ADA, but individuals can file a suit in federal district court.</p>