

Comparison of the IDEA and Section 504

By Mary Durham, *Educational Rights Information and Consulting Center*

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THE IDEA

SECTION 504

Year Enacted

1975 - Reauthorized as *Individuals with Disabilities Education Improvement Act* in December 2004. Effective July 1, 2005.

1973

Regulations effective August 3, 2006.

Legal Citation

20 USC 1400, Ch. 33 §§1401 - 1487
34 CFR Part 300

29 USC 794
34 CFR Part 104

Type of Statute

Federal funding statute providing federal aid to states that ensure the provision of a free appropriate public education to qualified children with disabilities.

Civil rights, non-discrimination statute protecting individuals with disabilities from discrimination in programs and activities receiving federal financial assistance.

Who is Covered?

A Child with a Disability - Children ages 3 to 21 who meet the definition of a preschool child with a disability or one of thirteen categories of disabilities applicable to school age children: autism, deaf/blind, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disturbance, specific learning disabilities, speech or language impairment, traumatic brain injury, visual impairment including blindness and who by reason thereof, needs special education and related services.

P.L. 108-446 §602(3)(A-B)
Regulation: 34 CFR §300.8

A qualified disabled person means “with respect to public preschool, elementary, secondary, or adult educational services, a disabled person is

- (i) of an age during which non-disabled persons are provided such services,
- (ii) of any age during which it is mandatory under state law to provide such services to disabled persons, or
- (iii) to whom a state is required to provide a free appropriate public education under §612 of the IDEA;”

AND

“Any person who:

- (1) has a mental or physical impairment which 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.”

34 CFR §104.3(k)(2), (j)(1)

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Major Provisions

Ensures 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. Ensures that the rights of children with disabilities and their parents are protected.

P.L. 108-446 §601(d)
Regulation: 34 CFR §300.1

What is FAPE? Free Appropriate Public Education

The provision of special education and related services... provided at public expense in conformity with an IEP in a manner reasonable calculated to enable the child to receive **educational benefit**.

P.L. 108-446 §602(9)
Regulation: 34 CFR §300.17

Least Restrictive Environment (LRE)

The placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs **only** when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved. In addition, the placement must provide the special education needed by the student, allow for the student to be with non-disabled students to the maximum extent appropriate, and be as close as possible to the student's home. Continuum of placements **must** be available and appropriately considered. Ensures that a child with a disability is not removed from education in an age appropriate regular classroom solely because of needed modification in the general education curriculum.

P.L. 108-466 §612(a)(5)
Regulations: 34 CFR §300.114- 117

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"No other qualified individual with a disability shall solely by reason of his/her disability be:

- *Excluded from participation in;*
- *Denied the benefits of; or*
- *Be subjected to discrimination under any program or activity receiving federal financial assistance."*

29 USC §794(a)
34 CFR §104.4

The provision of regular or special education or related aids and services designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met.

34 CFR §104.33(b)(1)(i)

The student shall be placed in the regular educational environment unless the child's education cannot be achieved satisfactorily even with the use of supplementary aids and services.

34 CFR §104.34(a)

"... it should be stressed that, where a disabled student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the disabled child cannot be met in that environment. Therefore, regular placement would not be 'appropriate' to his or her needs and would not be required by §104.34."

34 CFR §104.34, Appendix A, #24

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Multi-Disciplinary Team (IEP Team)

A multi-disciplinary team evaluation is required to assess all areas related to the suspected disability. The IEP team includes: the parent(s) of a child with a disability; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); not less than one special education teacher of the child or where appropriate not less than one special education provider of the child; a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the public agency; an individual who can interpret the instructional implications of evaluation results; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and, whenever appropriate, the child.

P.L. 108-446 §614(d)(1)(B)
Regulation: 34 CFR §300.321

Procedural Safeguards – Notice

Requires written notice in the parent's dominant language prior to the initiation, change or refusal to change the identification, evaluation or educational placement of a child or the provision of FAPE and/or upon request by a parent.

P.L. 108-446 §615(b)(3)
Regulation: 34 CFR §300.504

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Group of individuals knowledgeable about the student, evaluations, and placement options. (Minimum of 2 people).

34 CFR §104.35(c)(3)

Although §504 regulations do not specifically require **written** notice of action to identify, evaluate, or place a child who may be disabled under §504, such notice should be provided in writing. Notification is also required before any *“significant change in placement.”*

34 CFR §104.36

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Procedural Safeguards – Components of Notice to Parents

Written prior notice must be given to the parents of a child with a disability whenever the local educational agency:

- (i) proposes to initiate or change; or
- (ii) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Notice must be in the parent's native language unless not feasible to do so.

Notice must provide an opportunity for mediation as detailed in the statute.

The notice must include:

- (A) A description of the action proposed or refused by the agency;
- (B) An explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (E) A description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) A description of the factors that are relevant to the agency's proposal or refusal.

P.L. 108-446 §615(c)(1)(A-F)

Regulation: 34 CFR §300.503

Parent Participation

Required.

Regulation: 34 CFR §300.501

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Parents have the following rights:

- To receive notice upon the identification, evaluation, or placement of their child;
- An opportunity to review their child's educational records;
- The right to request an impartial hearing and be represented by counsel; and
- The right to review the hearing officer's decision by a court of competent jurisdiction.

34 CFR §104.36

Not required, but parent must be given an opportunity to provide input/information for consideration by the committee.

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Confidentiality

The State must have policies and procedures to ensure that public agencies comply with §300.160-§300.626 related to protecting the confidentiality of any personally identifiable information collected, used or maintained under Part B of this Act. Required by FERPA.

Regulations: 34 CFR §300.123;
34 CFR §§300.610 – 300.626

Required by FERPA – Family Educational Rights and Privacy Act.

Notice of the Right to an Outside Independent Evaluation

A parent who disagrees with the evaluation obtained by the school district has the right to an independent evaluation at public expense unless the district initiates an impartial hearing and the district's evaluation is found to be appropriate.

Regulation: 34 CFR§300.502

Not allowed under §504.

Initial Evaluations

In conducting the evaluation, the LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information including information provided by the parent. Evaluation must assess all areas related to the child's suspected disability.

P.L. 108-446 §614(b)(2-3)
Regulation: 34 CFR §300.304

"In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified."

Regulation: 34 CFR §300.304(b)(6)

The evaluation must draw upon information from a variety of sources including aptitude and achievement tests, teacher recommendations, physical conditions, social or cultural background and adaptive behaviors. Procedures must ensure that information obtained is documented and carefully considered.

34 CFR §104.35(c)(1)(2)

Timelines

Initial evaluations shall be completed within 60 days of receiving parental consent for the evaluation, or, if State establishes a timeframe, within which the evaluation must be conducted, within such timeframe.

P.L. 108-446 §614(a)(1)(C)(i)
Regulation: 34 CFR
§300.301(c)(1)(i-ii)

None written in regulations, however, ...
"failure to conduct an evaluation within a reasonable period of time after referral violates Section 504 when it denies an eligible student an appropriate education."

Lumberton (MS) Pub: Sch Dist.,
18 IDELR 33 (Ocr 1991)

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Parental Consent

Parent must consent to the evaluation and placement of a student not previously identified with a disability. Consent is voluntary on the part of the parent and may be withdrawn at any time; however the consent is not retroactive nor does it negate an action that has occurred after the consent was given and before the consent was revoked. Separate consent must also be obtained for the initial provision of special education and related services.

The parent must be fully informed of all information relevant to the activity for which the consent is sought, in his/her native language and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Informed parent consent must be obtained before (i) conducting and initial evaluation or reevaluation; (ii) initial provision of special education and related services to a child with a disability."

P.L. 108-446 §614(a)(1)(D)
Regulations: 34 CFR §300.9;
34 CFR §300.300

Although not specifically required under §504 regulations, *Response to Zirkel*, OCR May 1995, and *Response to Durham*, OCR December 1997, requires "parental consent prior to the conduct of initial student evaluation procedures for the identification, diagnosis, and prescription of specific educational services."

OCR, 27 IDELR 380, December 1997

Re-evaluation

Re-evaluation shall be conducted not more frequently than one a year, unless the parent and the local educational agency agree otherwise; and at least once every 3 years, unless the parent and the local educational agency agree that reevaluation is unnecessary. Informed parental consent is required for reevaluations.

P.L. 108-446 §614(a)(2)(A-B)
Regulations: 34 CFR §300.303 –
34 CFR §300.311

Required prior to any significant change of placement.

34 CFR §104.34(a)

Periodic reevaluations are required, but consent is not required on reevaluations.

Documentation of Placement

Development of a written Individualized Education Program (IEP). The IEP must be developed to meet the child's individual needs and allowing for the child to receive educational benefit in the least restrictive environment.

P.L. 108-446 §614(d)(1)(A)
Regulation: 34 CFR §300.320

Although not required in writing by the regulations, a written Accommodation Plan is recommended.

Implementation of an IEP in accordance with the IDEA is one means of meeting the standard.

34 CFR §104.33(2)

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Due Process

Right to an impartial hearing with hearing officer appointed by the SEA. Must exhaust administrative remedies. Includes the right to be represented by counsel, to review any action involving the identification, evaluation, educational placement or the provision of FAPE to a child with a disability as defined under the IDEA. In addition, parents may file complaints which set forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known the alleged action that forms the basis of the complaint.

P.L. 108-446 §615(b)(6)(A-B)
Regulations: 34 CFR §300.506 –
34 CFR §300.516

Discipline

Any suspension of 10 consecutive days or more is a “*significant change of placement*” triggering the procedural safeguards of the IDEA. The educational placement pending appeals is now the interim alternative educational setting. Cumulative suspensions of more than 10 days within the school year may also trigger the procedural safeguards under the IDEA. Cannot terminate FAPE as a result of a disciplinary measure. A child with a disability may immediately be removed to an interim alternative educational setting for carrying or possessing a weapon, knowingly possessing, using, selling or soliciting the sale of a controlled substance or for inflicting serious bodily injury upon another person.

P.L. 108-446 §615(k)(1-4)
Regulations: 34 CFR §300.530 –
34 CFR §300.536

Program Access

Each public agency shall take steps to provide nonacademic services and activities in such a manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities. In addition, a variety of educational programs (i.e., art, music, vocational education, etc.) and services available to non-disabled children must also be available to the child with a disability.

Regulations: 34 CFR §300.107;
34 CFR §300.110

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Right to an impartial hearing and a review procedure, including the right to be represented by counsel. Administrative remedies need not be exhausted prior to filing a complaint in state or federal court or with the Office for Civil Rights (OCR).

34 CFR §104.36

District must reevaluate the child prior to any suspension of 10 days or more and must conduct a manifestation determination. If there is a link, the child may not be suspended for more than 10 days unless the child is caught currently engaging the use of illegal drugs and/or alcohol. No automatic right to remain in the current educational placement.

OCR Memorandum Re: Suspension of Students with Disabilities.
16 EHLR 491, OCR 1989.

No qualified individual with a disability shall, because a recipient’s facilities are inaccessible or unusable by disabled individuals, be denied the benefits of or be excluded from participation in, or otherwise be subjected to discrimination under any program or activity. Does not require recipients to make each of its existing facilities or every part of an existing facility accessible.

34 CFR §104.4

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Child Find

The State must have in effect policy and procedures to ensure that all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability and who are in need of special education and related services, are identified, located and evaluated.

Regulation: 34 CFR §300.111

A school (recipient) that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

34 CFR §104.33(a)

Internal Grievance Procedure

State complaint procedure required.

Regulation: 34 CFR §300.151

Requires districts with 15 or more employees to designate a §504 compliance officer and a grievance procedure to investigate complaints alleging noncompliance with §504 procedures.

34 CFR §104.7

School Board Policy

Not addressed in regulations.

Requires written policies advising parents and their disabled students of the district's responsibility to identify evaluate and provide FAPE (free appropriate public education) to eligible children with disabilities.

34 CFR §104.8

Self-Evaluation

Not addressed in regulations.

Required recipients to conduct a self-evaluation to identify discriminatory policies and steps to modify any discriminatory policies and practices.

34 CFR §104.6

State Educational Standards

See individual State Education Codes.

Neither §504 nor its regulations make reference to state standards.

Compliance and Enforcement

Office of Special Education Programs (OSEP) and the State Education Department. Non-compliance may result in loss of IDEA funds and state aid. Administrative appeals and/or courts.

Office for Civil Rights (OCR) – United States Department of Education. Non-compliance may result in loss of ALL federal funds. Administrative appeals and/or courts.

CONCERTA® is a prescription product approved for the treatment of attention deficit hyperactivity disorder (ADHD) as part of a total treatment program that may include counseling or other therapies.



IMPORTANT SAFETY INFORMATION

Talk to your healthcare professional for a proper diagnosis and treatment of ADHD. Only a healthcare professional can decide whether medication is right for you or your child.

CONCERTA® should not be taken by patients who have: allergies to methylphenidate or other ingredients in CONCERTA®; significant anxiety, tension, or agitation; glaucoma; tics, Tourette's syndrome, or family history of Tourette's syndrome; current or past use of monoamine oxidase inhibitor (MAOI); esophagus, stomach, or intestinal narrowing. Children under 6 years of age should not take CONCERTA®.

Abuse of methylphenidate may lead to dependence. Tell your healthcare professional if you or your child has had problems with alcohol or drugs; has had any heart problems, heart defects, high blood pressure, or a family history of these problems; has had depression, abnormal thoughts or visions, bipolar disorder, or seizure. Contact your healthcare professional immediately if you or your child: develops abnormal thinking or hallucinations, abnormal or extreme moods and/or excessive activity; or if aggressive behavior or hostility develops or worsens while taking CONCERTA®. Your child's healthcare professional should check height and weight often and may interrupt CONCERTA® treatment if your child is not growing or gaining weight as expected.

Stimulants may impair the ability of the patient to operate potentially hazardous machinery or vehicles. Caution should be used accordingly until you are reasonably certain that CONCERTA® does not adversely affect your ability to engage in such activities.

The most common adverse reaction (>5%) reported in children and adolescents was upper abdominal pain. The most common adverse reactions (>10%) reported in adults were dry mouth, nausea, decreased appetite, headache, and insomnia.

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