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Laws Affecting Students with Disabilities: Preschool Through Postsecondary Education

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SUMMARY

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Laws Affecting Students with Disabilities: Preschool Through Postsecondary Education

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA) each play a significant part in federal efforts to support the education of individuals with disabilities. These statutory frameworks, while overlapping, differ in scope and in their application to students with disabilities. As a result, when students with disabilities transition between levels of schooling, the accommodations and services they must be provided under federal law may change. For example, while the IDEA, the ADA, and Section 504 potentially apply to children with disabilities from preschool through 12th grade (P-12), only the ADA and Section 504 apply to students in an institution of higher education. More generally, application of the IDEA, Section 504, and the ADA to students with disabilities is determined by (1) the definition of "disability" employed by each framework; (2) the mechanisms employed under each law to determine whether a student has a qualifying disability; and (3) the adaptations, accommodations, and services that must be provided to students with disabilities under each law.

Individuals with Disabilities Education Act (IDEA)

The IDEA, as amended, authorizes federal grants to states to support the education of children with disabilities. The act requires that states, as a condition for receiving funds, provide students with disabilities a range of substantive and procedural protections. For example, states and local education agencies (LEAs) must (1) identify, locate, and evaluate all children with disabilities residing in the state, regardless of the severity of their disability, to determine which children are eligible for special education and related services; (2) convene a team, which includes the parents of each eligible child with a disability, to develop an individual education program (IEP) spelling out the specific special education and related services to be provided to that child to ensure a "free appropriate public education" (FAPE); and (3) provide procedural safeguards to children with disabilities and their parents, including a right to an administrative hearing to challenge determinations and placements, with the ability to appeal the ruling to federal district court. Of the three legal frameworks discussed in this report, only the IDEA is focused squarely on educational matters, and its statutory provisions and implementing regulations specifically detail the rights of children with disabilities and their families in U.S. public schools. Of the three laws examined here, the IDEA is also the only one that fixes an age limit, with its substantive and procedural guarantees applying to persons with disabilities from birth until they reach 21 years or exit high school, if earlier.

Section 504 of the Rehabilitation Act of 1973

Section 504 is an antidiscrimination provision within a broader federal law providing rehabilitation services to people with disabilities. Section 504 protects individuals from disability discrimination in programs and activities that receive federal financial assistance, including elementary and secondary schools, as well as many colleges and universities. While Section 504 is terse in describing covered entities' obligations, the statute's implementing regulations, including those promulgated by the U.S. Department of Education (ED) applicable in the educational context, are extensive. For example, Section 504 and its implementing regulations require all schools receiving federal funds to make their application forms and course materials accessible to people with disabilities.

Americans with Disabilities Act of 1990 (ADA)

Enacted in 1990, the ADA provides broad nondiscrimination protection for individuals with disabilities across a range of institutional contexts, both public and private, including employment, public services, transportation, telecommunications, public accommodations, and services operated by private entities. In an educational context, the ADA and implementing regulations effectively require both public schools and many P-12 private schools to ensure that students with disabilities are not excluded, denied services, segregated, or otherwise treated differently than other individuals because of their disability, unless the school can demonstrate that taking those steps would fundamentally alter the nature of the school's program or cause an undue financial burden. The ADA's statutory provisions and implementing regulations outline the types of modifications that must be made for individuals with disabilities, including the removal of barriers, alterations to new and existing buildings, accessible seating in assembly areas, and accessible examinations and course materials.

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Introduction

Several federal laws address the services and protections received by students with disabilities. The application of these laws may change depending upon the student's situation, and most commonly at times of transition—whether the student moves to a new school district or state, or between preschool and kindergarten, elementary school and junior high, junior high and high school, or high school and postsecondary education. Often the biggest transition for students with disabilities and their families is from the supports and services provided in the preschool-12th grade (P-12) public education system to a college or university.

At the P-12 level, three main federal laws impact students with disabilities: the Individuals with Disabilities Education Act (IDEA),[1] Section 504 of the Rehabilitation Act of 1973 (Section 504),[2] and the Americans with Disabilities Act (ADA).[3] For students receiving special education under the IDEA or receiving accommodations and services under Section 504, transitioning from the P-12 public education system to an institution of higher education (IHE) may affect how the school assesses their disability, their eligibility for receiving accommodations or services, and the supports, services, and accommodations available to them. This report examines those laws' impact on students with disabilities in three key respects: how they define disability; how they determine eligibility for services and protections; and how they ensure students with disabilities receive the accommodations and services they need to participate in all levels of education.

Laws Protecting Students with Disabilities

Section 504 of the Rehabilitation Act of 1973

In 1973, following two major federal district court decisions concluding that children with disabilities have the same right of access to public education as other children,[4] Congress enacted the first of a series of civil rights statutes protecting individuals with disabilities: Section 504 of the Rehabilitation Act of 1973.[5] The Rehabilitation Act of 1973 provided a statutory basis for the Rehabilitation Services Administration and funding for projects and studies supporting the employment of people with disabilities. Section 504 was the last section of the Act and the only section concerned with the civil rights of people with disabilities. That provision accordingly provides broad antidiscrimination protections for the disabled, prohibiting any "program or activity" that receives federal financial assistance from excluding "otherwise qualified individual[s] with a disability" from participating in, or benefiting from, those programs.[6] Given

[1] P.L. 108-446. For more information on IDEA Part B, *see* CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo.

[2] P.L. 93-112, as amended.

[3] 42 U.S.C. §§ 12101 et seq. For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Cynthia Brown (available to congressional clients upon request).

[4] *See* Mills v. Bd. of Educ, 348 F. Supp. 866, 874-75 (D.D.C. 1972) (concluding that "denying [children with disabilities] not just an equal publicly supported education but all publicly supported education while providing such education to other children, is violative of the Due Process Clause" of the Fifth Amendment); Penn. Ass'n for Retarded Children (PARC) v. Pennsylvania, 343 F. Supp. 279 (E.D. PA 1971) (concluding the same under the Due Process and Equal Protection Clauses of the Fourteenth Amendment).

[5] 29 U.S.C. § 794.

[6] *See* 29 U.S.C. § 794(a) (providing that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be

the reach of federal funding, Section 504's guarantee of nondiscrimination stretches quite far, covering not just the P-12 public schools but also postsecondary education, employment, and access to public facilities as well. And because of that breadth, the act remains a key legal protection for students with disabilities today.

Students who receive accommodations under Section 504 in high school may have an easier time transitioning to a postsecondary educational environment because the basic protections under Section 504 remain the same regardless of the age or education level of the person with a disability. As explained later in this report, the U.S. Department of Education (ED) has developed separate Section 504 regulations covering these different levels of education, including Preschool, Elementary, and Secondary Education (Subpart D)[7] and Postsecondary Education (Subpart E).[8]

ED's Office of Civil Rights (OCR) has a primary role in enforcing Section 504 in the education context, affecting a significant number of students. In the 2013-2014 school year (SY), OCR reported that nearly 1 million public school students received some sort of service under Section 504.[9] And at the postsecondary level, where students with disabilities receive protection under both Section 504 and the ADA, in SY 2015-2016, approximately 19.5% of undergraduates and 12.0% of post-baccalaureate students reported having a disability.[10]

The Individuals with Disabilities Education Act

Two years after enactment of the Rehabilitation Act, Congress passed the Education for All Handicapped Children Act, later renamed the IDEA, which focused directly on children with disabilities' access to education.[11] At the time of the IDEA's adoption, Congress found that more than half of all children with disabilities were not receiving appropriate educational services and that 1 million children with disabilities were excluded entirely from the public school system.[12] Congress determined, in addition, that many children participating in public school programs had undiagnosed disabilities that harmed their educational progress.[13] To address these findings, Congress laid down a clear mandate to any state seeking funds under the act: in order to receive

subjected to discrimination under any program or activity receiving Federal financial assistance").

[7] 34 C.F.R. §§ 104.31-104.39.

[8] *Id.* §§ 104.41-104.47.

[9] U.S. Dep't of Educ., Office for Civil Rights, Civil Rights Data Collection, 2013-14, Number and percentage of public school students with disabilities served solely under Section 504 of the Rehabilitation Act of 1973 overall and by race/ethnicity, and those who are English language learners, by state: School Year 2013-14, http://ocrdata.ed.gov.

[10] U.S. Dep't of Educ., National Center for Education Statistics, 2015-16 National Postsecondary Student Aid Study (NPSAS:16). Estimate obtained by CRS through NCES DATALAB (https://nces.ed.gov/datalab/index.aspx) and is based on student self reporting on surveys administered through the NPSAS. NPSAS:16 changed the wording of disability-related questions from prior NPSAS administrations, resulting in an increase in reported disabilities. In NPSAS:16, students were instructed to indicate if they had a long-lasting condition such as serious difficulty hearing; blindness or serious difficulty seeing; serious difficulty walking or climbing; or difficulty concentrating, remembering or making decisions (examples of these conditions were added to the interview and students were instructed to include, for example, ADD, ADHD, depression, or a serious learning disability).

[11] 20 U.S.C. §§ 1400 et seq.; P.L. 94-142. The name was changed to the Individuals with Disabilities Education Act by P.L. 101-476. The public law also substituted the phrase "children with disabilities" for the original "handicapped children" throughout the act.

[12] 20 U.S.C. § 1400(c)(2).

[13] *Id.*

those funds, the state must "identify and evaluate" all children with disabilities residing "within [their] borders" to ensure those children receive a free appropriate public education.[14]

The IDEA has been comprehensively reauthorized five times since its original enactment in 1975, most recently in 2004.[15] ED's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers the act, and it remains the main federal statute governing special education for children from birth through age 21.[16] The IDEA does so by supplementing state and local funding to pay for some of the additional or excess costs of educating children with disabilities. Of particular importance is Part B of the act, which protects the right of individuals with disabilities, from age 3 through 21, to a "free appropriate public education" (FAPE).[17] In SY2017-2018, approximately 7 million children ages 3 through 21 received special education and related services under Part B of the IDEA.[18] Students served under Part B of the IDEA represent about 13.6% of all P-12 public school students.[19]

The Americans with Disabilities Act of 1990

The ADA,[20] as amended, has been described as "the most sweeping anti-discrimination measure since the Civil Rights Act of 1964."[21] Its purpose, as explained in the act itself, is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[22] The ADA therefore provides broad nondiscrimination protection for individuals with disabilities, applicable across many settings. Title II of the act, in particular, prohibits any "public entity," such as a public school, from discriminating based on disability,[23] while Title III similarly forbids discrimination by "public accommodations,"[24] including nonparochial private schools.[25]

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[14] Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 181 (1982); *see* 20 U.S.C. § 1414.

[15] P.L. 108-446.

[16] For more information about the IDEA see CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities*; and CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*.

[17] 20 U.S.C. § 1412(a)(1).

[18] U.S. Dep't of Educ., EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2017-2018, https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html#partb-cc. The IDEA in the context of this report means Part B of the IDEA.

[19] CRS calculation of IDEA Part B child count as a share of public school enrollment. Data sources are U.S. Dep't of Educ., EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2017-2018, https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html#partb-cc and National Center for Education Statistics, *Digest of Education Statistics*, Enrollment in public elementary and secondary schools, by level and grade: Selected years, fall 1980 through fall 2027, Table 203.10; https://nces.ed.gov/programs/digest/d17/tables/dt17_203.10.asp.

[20] P.L. 101-336; 42 U.S.C. §§ 12101 et seq.

[21] *See, e.g.*, *A Law for Every American*, N.Y. TIMES, July 27, 1990, at A26.

[22] 42 U.S.C. § 12101(b)(1).

[23] 42 U.S.C. §§ 12131-12132; *see also* Fry v. Napoleon Cmty. Sch., 137 S.Ct. 743, 749 (2017) (describing these obligations in a case challenging a public school's denial of a service dog for a student).

[24] 42 U.S.C. § 12182 (providing that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation").

[25] *Compare id.* § 12181(7)(J) (listing among covered "public accommodation[s]" any "nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education) *with id.* § 12187 (exempting "religious organizations or entities controlled by religious organizations, including places of worship"). *Cf.* Marshall v. Sisters of

The ADA Amendments Act adopted in 2008 and made effective January 1, 2009, broadened the scope of the ADA's definition of disabilities, and, through conforming amendments, Section 504's definition as well.[26] The ADA Amendments Act extends the ADA[27] and Section 504 coverage to more clearly encompass all public, and some private, P-12 schools and nearly all postsecondary IHEs.[28] According to the U.S. Census Bureau, 12.7% of the civilian noninstitutionalized population were reported to have a disability in 2017 (about 40.7 million people), including 4.2% of all children under age 18 (roughly 3.1 million) and 6.4% of all adults ages 18 to 34 (about 4.7 million).[29] These individuals are covered by the broad protections of the ADA when accessing most services and facilities, including secondary and postsecondary educational institutions.

Defining "Disability"

The IDEA's Categorical Definition of "Disability"

The IDEA incorporates a categorical definition of "disability," identifying a covered "child with a disability" as any "child"[30] having at least one of 13 conditions specifically categorized in the act.[31] Thus, to qualify for services under the IDEA a student of qualifying age must satisfy two requirements.[32] First, the student must have a documented disability that falls in one of the categories enumerated in the IDEA, [33] as further specified by ED's implementing regulation.[34] And second, as a result of that disability the student must require "special education and related services" in order to benefit from public education.[35] Only if the student meets both criteria will

Holy Family of Nazareth, 399 F.Supp.2d 597, 605-06 (E.D. Pa. 2005) (concluding that "a private school that is owned and operated by a religious organization, adheres to Quaker principles, and requires weekly Quaker meetings is exempt from the ADA").

[26] P.L. 110-325.

[27] 42 U.S.C. §§ 12101 et seq. Except when explicitly referring to the original ADA, in this report "the ADA" is used to refer collectively to the 1990 act and the ADA Amendments Act.

[28] The ADA Amendments Act extended coverage provided by the ADA of 1990 and Section 504 by clarifying and expanding the ADA's definition of disability and its prohibitions against the discrimination of people with disabilities by both public services and accommodations, services, and commercial facilities operated by private entities. *See* P.L. *supra* note 24 and accompanying text.

[29] U.S. Census Bureau, *2017 American Community Survey (ACS) 1-Year Estimates*, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/S1810. For more information on the definition of disability used in the ACS, see U.S. Census Bureau, "Disability: American Community Survey," https://www.census.gov/people/disability/methodology/acs.html.

[30] Even though the IDEA refers to all covered individuals as "children," the act in fact applies to at least some legal adults. *See* 20 U.S.C. § 1412(a)(1)(A) (requiring recipient states to provide a FAPE to "all children with disabilities residing [there] between the ages of 3 and 21, inclusive"). In keeping with the statutory terminology, this report occasionally refers to covered individuals as "children" as well.

[31] *Compare* 20 U.S.C. § 1401(3)(A)(i) (defining a "child with a disability" as one who has "intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities") *with* 34 C.F.R. §§ 300.8(c)(1)-(13) (enumerating these as 13 distinct categories of disabilities covered by the IDEA).

[32] As noted above, the act also includes an age restriction: a recipient state need make a FAPE available only to "children with disabilities residing [there] between the ages of 3 and 21, inclusive." 20 U.S.C. § 1412(a)(1)(A).

[33] 20 U.S.C. § 1401(3)(A)(i).

[34] 34 C.F.R. § 300.8(c)(1)-(13) (listing the 13 recognized categories of qualifying disabilities under the act).

[35] 20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a)(1).

he or she be eligible to receive the principal benefit of the act: specially designed instruction or special education in which the content or the delivery of the instruction is adapted to the child's individual needs, detailed in a plan known as an individualized education program (IEP).[36] Consequently, a child who has a disability not recognized under the act,[37] or has a disability that may require related services but not special education,[38] has no right under the IDEA to the special education and related services provided through an IEP.[39]

Each IDEA disability category is broadly defined in ED's regulations implementing the act.[40] And that breadth has given states some room to adopt more specific requirements for these categories, so long as those further requirements do not exclude children otherwise eligible for services under the act.[41] Thus, for example, while the IDEA expressly covers a child suffering from some "other health impairments" (OHI),[42] the act itself does not specify the sort of disorders that might count as such. In its IDEA regulations, ED has provided a complex definition of that statutory OHI category,[43] listing a series of examples of disorders that may qualify under it.[44] And some states, in their own implementing regulations, have further elaborated on ED's definition, particularly its condition that, to qualify under the IDEA, an OHI must "adversely affect[] a child's educational performance."[45] Delaware, for instance, lists five broad requirements under "Eligibility Criteria for Other Health Impairment," one of which specifically outlines criteria for determining whether children with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD) have an OHI.[46] When a child's eligibility under the IDEA is due to ADD or ADHD, Delaware's regulation requires evaluators to examine the child according to an additional six factors, and within those six factors 18 symptoms, to determine whether the child's ADD or

[36] 20 U.S.C. § 1414(d) (outlining the requirements for developing an Individualized Education Program (IEP) under the act); 34 C.F.R. §§ 300.320-300.323 (ED's regulations for the same).

[37] *See* 20 U.S.C. § 1401(3)(A) (requiring that a student satisfy these two conditions to qualify as a "child with a disability").

[38] 34 C.F.R. § 300.8(a)(2).

[39] *See, e.g.*, Molly L. v. Lower Merion Sch. Dist., 194 F. Supp. 2d 422, 427 n.3 (E.D. Pa. 2002) (concluding that a child who was an "individual with a disability" under Section 504 did "not need special education and, therefore, d[id] not qualify for protection under [the] IDEA").

[40] *See id*. § 300.8(c)(1)-(13) (listing the 13 recognized categories of qualifying disability under the act).

[41] *See* U.S. Dep't of Educ., Office of Spec. Educ. and Rehab. Serv., Redacted Opinion Letter [hereafter "Opinion Letter"], at 1 (Jan. 7, 2002) (concluding that ED "has no authority to preclude [a state] from adopting [a particular] definition" of a condition for one of the qualifying disabilities under the IDEA, so long as that state definition does not "exclude[] otherwise eligible children"), https://www2.ed.gov/policy/speced/guid/idea/letters/2002-1/redact010702eligibility.pdf.

[42] 20 U.S.C. § 1401(3)(A) (defining a "child with a disability" as one who, among other conditions, experiences "other health impairments" and, "by reason thereof, needs special education and related services").

[43] 34 C.F.R. § 300.8 (c)(9) (defining an OHI as a condition of "limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that . . . [i]s due to chronic or acute health problems . . . and [a]dversely affects a child's educational performance").

[44] *Id.* (listing as examples such diseases "as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome").

[45] *See* Opinion Letter, *supra* note 41, at 1.

[46] 14 Del. Admin. Code §§ 925.6.14.1-925.6.14.5.

ADHD qualifies as an OHI.[47] Other states, meanwhile, impose no criteria beyond those found in ED's IDEA regulations for assessing whether a child has an OHI.[48]

Section 504 and the ADA's Functional Definition of "Disability"

Sections 504 and the ADA draw on a common definition of "disability,"[49] one that is substantially broader than the categorical definition found in the IDEA.[50] Under both laws, an "individual with a disability" includes "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."[51] This definition, unlike the IDEA's, is not restricted to the educational context. And also unlike the definition used in IDEA, the definition found in Section 504 and the ADA is broadly functional, protecting individuals with any "impairment" affecting a bodily or intellectual function—like seeing, hearing, walking, or thinking.[52] The conditions covered by Section 504 and the ADA are therefore not confined to a particular list of "disability" categories—"autism," for example, or "specific learning disability"—as they are under the IDEA.[53] As a result, an impairment qualifying as a "disability" under the IDEA will generally also be covered by Section 504 and the ADA, though not the reverse.[54]

Although the ADA Amendments Act maintains essentially the same statutory language as the original ADA, the subsequent act introduced several new "rules of construction" clarifying Congress's intent for the ADA's crucial term—"disability"[55]—to be construed broadly. These rules of construction regarding the definition of disability—applicable to both the ADA and Section 504—provide that:

> the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the act;

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[47] *Id.* §§ 925.6.14.2.1-925.6.14.2.6.

[48] *Cf.* 8 Va. Admin. Code § 20-81-80(S) (providing that "a child has an other health impairment" if the alleged impairment satisfies the definition of an OHI under 34 C.F.R. § 300.8 (c)(9) and "there is an adverse effect on the child's educational performance due to one or more documented characteristics of an orthopedic impairment").

[49] 29 U.S.C. § 794(a) (adopting by cross-reference the statutory definition found at *id.* § 750(20)(B), incorporating the ADA's definition at 42 U.S.C. § 12102). Because of their overlap, the courts have generally construed "the rights and remedies under both [Section 504 and the ADA to be] the same," so that "case law interpreting one statute can be applied to the other." Pace v. Bogalusa City Sch. Bd., 403 F.3d 272, 287-88 (5th Cir. 2005); *accord* Lacy v. Cook Cty., 897 F.3d 847, 852 n.1 (7th Cir. 2018) (noting that "[b]ecause Title II was modeled after section 504, 'the elements of claims under the two provisions are nearly identical'"); Jakubowski v. Christ Hosp., Inc., 627 F.3d 195, 201 (6th Cir. 2010); Durand v. Fairview Health Servs., 902 F.3d 836, 841 (8th Cir. 2018).

[50] *See* Muller v. Comm. on Special Educ. of E. Islip Union Free Sch. Dist., 145 F.3d 95, 100 n.2 (2d Cir. 1998) (noting that, because "the Rehabilitation Act is broader in scope," "the definition of 'individual with a disability' under [Section] 504 . . . is broader in certain respects than the definition of a 'child with [a] disability' under the IDEA").

[51] *Id.*

[52] *See* 42 U.S.C. § 12102(2)(A) (listing these among other examples of "major life activities").

[53] *See* 20 U.S.C. § 1401(3)(A)(i).

[54] Among the most common disabilities included under Section 504 regulations but not always covered under the IDEA or its implementing regulations are ADHD, diabetes, asthma, and dyslexia. Rachel A. Holler and Perry A. Zirkel, *Section 504 and Public Schools: A National Survey Concerning 'Section 504-Only' Students*, 92 NASSP BULLETIN 19, 28 (Mar. 2008). These conditions may be covered under implementing IDEA regulations in some circumstances, as either an "other health impairment" or a "specific learning disability." *See* 34 C.F.R. § 300.8(c)(9)-(10).

[55] 42 U.S.C. § 12102.

> the term "substantially limits" shall be interpreted consistently with the findings and purposes of the Amendments Act;
>
> an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
>
> an impairment that is episodic or in remission is a disability if it would have substantially limited a major life activity when active; and
>
> the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered.[56]

The ADA Amendments Act also included a conforming amendment to the Rehabilitation Act of 1973, applying these more generous rules of construction to Section 504. ED's OCR consequently enforces the regulations implementing both Section 504 and Title II of the ADA consistently with the ADA Amendments Act.[57]

Preschool Through Secondary Education Versus Postsecondary Education

The IDEA covers all children with disabilities residing in states that receive financial assistance under the act.[58] It does not extend, however, to students with disabilities in college or other postsecondary education and training programs.[59] But Section 504 does, and ED has issued separate regulations specifically elaborating that provision's application to preschool, elementary, and secondary education,[60] as well as to postsecondary education.[61] The ADA also does not directly address the provisions of educational services; it instead prohibits discrimination against individuals with disabilities across many contexts, including by a "public entity" like a public school.[62] The following sections of this report identify key provisions in the IDEA, Section 504, and the ADA, explain how they apply in particular situations, and analyze how they differ between students in P-12 and postsecondary education settings when more than one law applies. **Table 1** also summarizes and compares key characteristics of the IDEA, Section 504, and the ADA.

[56] *Id.* § 12102(4). Low-vision devices are not included in the ordinary eyeglasses and contact lens exception. *Id.*

[57] U.S. Dep't of Educ., *Disability Discrimination*, http://www2.ed.gov/policy/rights/guid/ocr/disability.html.

[58] *See* Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 993 (2017) (citing 20 U.S.C. § 1412(a)(1)).

[59] *See* 20 U.S.C. § 1401(9) (limiting a FAPE to "an appropriate preschool, elementary school, or secondary school education").

[60] 34 C.F.R. § 104, Subpart D.

[61] *Id.* § 104, Subpart E.

[62] 42 U.S.C. §§ 12131-12132.

Evaluation and Placement

Evaluations in Preschool, Elementary, and Secondary Education

Child Find

The IDEA requires each state that receives funds under the act to have in place policies and procedures to identify, locate, and evaluate all children residing in the state who may have a disability requiring special education and related services.[63] These policies and procedures—known as "Child Find"[64]—have broad application, covering all children ages 3 to 21 through their time in high school, including those who are homeless or wards of the state, attend private schools, or, according to IDEA's regulations, are highly mobile, like migrant children.[65]

The regulations implementing Section 504 contain similar provisions requiring recipients of federal money operating public elementary and secondary schools "to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education."[66] Section 504's regulations also require LEAs to evaluate students individually before classifying them as having a disability or providing them with accommodations, special education, or related services.[67] But these responsibilities apply only to students in public elementary or secondary schools.[68] Students protected by Section 504 in colleges and universities are responsible for providing their IHEs with documentation of their disabilities and for working with the IHE's disability support services personnel to arrange any accommodations they may need.[69] And the same is true under the ADA.[70]

Evaluation

A child who has been identified as having (or possibly having) a disability must be evaluated by his or her LEA before receiving special education and related services under the IDEA or Section 504.[71] The ADA, by contrast, contains no such requirement. Under the IDEA, individuals may qualify for an IEP only if they have been determined to have a qualifying disability for which they need special education and/or related services to benefit from public education.[72] But a child who has a disability that does not adversely affect his or her educational performance—as

[63] 20 U.S.C. § 1412(a)(3); *see also* Bd. of Educ. v. Rowley, 458 U.S. 176, 180-81 (1982) (outlining states' Child Find responsibilities).

[64] 20 U.S.C. § 1412(a)(3).

[65] 34 C.F.R. § 300.111.

[66] *Id*. § 104.132(a).

[67] *Id*. § 104.35(b).

[68] *Id.* § 104.35(a) (limiting this requirement to a "recipient that operates a public elementary or secondary education program or activity").

[69] *See, e.g.*, U.S. Dep't of Educ., Office for Civ. Rights, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities* (outlining these responsibilities under Section 504 and Title II of the ADA), https://www2.ed.gov/about/offices/list/ocr/transition.html.

[70] *Id.*

[71] 34 C.F.R. § 104.35(a).

[72] 20 U.S.C. § 1414(a). This subsection contains the requirements for evaluations, parental consent, and reevaluations.

required to be eligible for an IEP under several IDEA disability categories[73]—may still qualify for a plan under Section 504.[74]

Under the IDEA, either a child's parent or the LEA may request an initial evaluation.[75] In general, the LEA must obtain informed consent from a child's parent before conducting an initial evaluation.[76] That consent, however, does not transfer—parental consent to an evaluation, that is, does not imply consent to special education and related services.[77] In addition, the initial evaluation must take place within 60 days of receiving parental consent or within an alternative time frame established by the state.[78]

Section 504, unlike the IDEA, does not explicitly call either for parental consent to an evaluation or for an evaluation to take place within a specific period after being requested. ED's OCR has nevertheless interpreted Section 504 to require LEAs to obtain parental consent to an initial evaluation.[79] But under Section 504, like under the IDEA, a parent's refusal of an evaluation may not be the final word. OCR has construed Section 504 to allow an LEA, whenever it "suspects a student needs or is believed to need special instruction and parental consent is withheld," to "use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation."[80]

In conducting an initial evaluation of a child suspected of having a disability, both the IDEA and Section 504 regulations require LEAs to use valid and reliable assessment tools tailored to assess a child's specific areas of educational need.[81] The IDEA emphasizes the importance of using multiple measures of assessing whether children are eligible for services under the statute, requiring LEAs to "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent."[82] The IDEA also requires that LEAs use multiple measures or assessments to determine whether a child

[73] 34 C.F.R. § 300.8.

[74] U.S. Dep't of Educ., Office for Civ. Rights, *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, at Q.32 (Sept. 25, 2018), https://www2.ed.gov/about/offices/list/ocr/504faq.html.

[75] The LEA may refuse the parent's request for an initial evaluation if it does not suspect that the child has a disability. However, the public agency must provide written notice to the parents, consistent with 34 C.F.R. § 300.503(b) and 20 U.S.C. § 1415(c)(1), which explains, among other things, why the public agency refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge such a refusal through an administrative hearing. *See generally* 20 U.S.C. § 1415; 34 C.F.R. §§ 300.507-300.508.

[76] 20 U.S.C. § 1414(d)(i)(I). As defined in ED's regulations, "consent" means, in part, that "the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication." 34 C.F.R. § 300.9. For further requirements regarding parental consent, see 34 C.F.R. § 300.300.

[77] In addition, at the time of the referral or parent request for evaluation, the LEA must provide the parent with the "Procedural Safeguards Notice," which is a comprehensive written explanation of IDEA's legal rights and protections for children with disabilities and their parents. *See* 20 U.S.C. § 1415(d).

[78] *Id*. § 1414(a)(1).

[79] U.S. Dep't of Educ., Office for Civ. Rights, *Protecting Students With Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, at Q.42 (Sept. 25, 2018), https://www2.ed.gov/about/offices/list/ocr/504faq.html.

[80] *Id.*; *cf.* 34 C.F.R. § 300.300(a)(iii)(3)(i) (allowing but not requiring a public school district to "utiliz[e] the procedural safeguards" of the IDEA regulations to "pursue the initial evaluation of a child" "enrolled in public school or seeking to be enrolled in public school," even absent parental consent).

[81] 20 U.S.C. § 1414(b)(2) (outlining requirements under the IDEA); 34 C.F.R. § 104.35(b) (providing regulations under Section 504).

[82] 20 U.S.C. § 1414(b)(2)(A).

is "a child with a disability" under the act, as well as to determine whether an educational program is appropriate.[83] The Section 504 regulations, for their part, also require LEAs "to draw upon information from a variety of sources" when interpreting evaluation data, "including aptitude and achievement tests, teacher recommendations, and adaptive behavior."[84] And the Section 504 regulations likewise "establish procedures to ensure that information obtained from all relevant sources is documented and carefully considered."[85]

Assessments and other evaluation materials used to assess a child under the IDEA must be selected and administered to avoid discriminating on a racial or cultural basis.[86] They must also be provided and administered in the language and form most likely to yield accurate information about what the child knows and can do academically, developmentally, and functionally.[87] Section 504's regulations do not address children's native language or the possibility of racially or culturally discriminatory evaluation materials. However, they do include "social or cultural background" information as one of several sources LEAs should draw upon in interpreting evaluation data and in making placement decisions.[88]

After completing an evaluation for an IEP under the IDEA, the LEA must determine whether the child is a "child with a disability" under the act, and, if so, what his or her educational needs are, including the participation of qualified professionals and the child's parents.[89] Section 504, by contrast, does not expressly require that a child's parents participate in placement decisions. Section 504 regulations instead provide only that placement decisions be made "by a group of persons, including those knowledgeable about the child, the meaning of the evaluation data, and the placement options."[90] ED's regulations under Section 504 do mandate, however, that LEAs have in place "a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure."[91]

Reevaluations

Under IDEA regulation, reevaluations are required if a child's teacher or parent makes a request or if the LEA determines that a child's educational and service needs, or functional performance warrant reevaluation.[92] For example, a reevaluation might be warranted if a child's performance in school significantly improves, suggesting that the child no longer requires special education and related services, or if a child is not making progress toward the goals in his or her IEP, suggesting that changes are needed in the special education or related services the LEA is providing. A reevaluation may not be done more than once a year unless the parents and LEA agree, and must be done at least once every three years unless the parent and the LEA agree that a

[83] *Id.* § 1414(b)(2)(B).

[84] 34 C.F.R. § 104.35(c).

[85] *Id.*

[86] 20 U.S.C. § 1414(b)(3)(A)(i).

[87] *Id.* § 1414(b)(3)(A)(ii). For additional requirements under the act, *see generally id*. § 1414(b).

[88] 34 C.F.R. § 104.35(c).

[89] 20 U.S.C. § 1414(b)(4)(A).

[90] 34 C.F.R. § 104.35(c).

[91] *Id*. § 104.36.

[92] *Id.* § 300.303(a).

reevaluation is unnecessary.[93] In general, the child's parent(s) must consent to a reevaluation, as well as to the initial evaluation.[94] Before any such reevaluation, an LEA may not change a child's eligibility for educational services under the IDEA, unless the child graduates from high school with a regular diploma or reaches the age at which state law no longer provides a FAPE.[95]

The briefer Section 504 regulations simply require LEAs to establish procedures for "the periodic reevaluation of students who have been provided special education and related services."[96] Reevaluation procedures consistent with the IDEA also satisfy this regulatory requirement.[97]

Evaluations and Reevaluations in Postsecondary Education

As noted, at the postsecondary level educational institutions have no responsibility for evaluating students for a disability. However, if a student requests modifications, accommodations, or auxiliary aids or services because of a disability, IHEs are allowed, though not required, to request that the student provide "reasonable" documentation of his or her disability and need for the requested accommodations or services.[98]

Before the ADA Amendments Act in 2008, which clarified Congress's intent that "disability" under the ADA and Section 504 be construed broadly, there had been significant confusion among IHEs about what a student could be required to use to document a disability. Different IHEs developed their own requirements for the evaluation/reevaluation materials students needed to submit to establish a disability warranting accommodations and services. Some universities required students to produce "recent" documentation of an evaluation or reevaluation for a disability, while other schools, looking to the IDEA as a guide, instead required comprehensive evaluations that were no more than three years old.[99] Requirements for "recent" documentation may apply to returning postsecondary students; students who had been served under Section 504 in high school; students who attended private schools that did not require or provide evaluations to determine students' disability status; and any postsecondary student with a disability whose disability had last been comprehensively evaluated in the ninth grade or earlier. Such students would need to be reevaluated at their own expense to prove that they were still a student with a disability, if they wanted to receive accommodations or supports at the postsecondary level.[100]

Prior to the passage of the ADA Amendments Act, several courts struck down triennial evaluation requirements used by colleges and universities, as well as requirements that students be regularly reevaluated for the presence of a disability even when they were permanently disabled and had sufficient (but not recent) proof of their disability status.[101] And the ADA Amendments Act only

[93] 20 U.S.C. § 1414(a)(2)(B).

[94] 34 C.F.R. § 300.300(c).

[95] 20 U.S.C. §1414(c)(5).

[96] 34 C.F.R. §104.35(d).

[97] *Id.*

[98] 28 C.F.R. §36.309(b)(iv).

[99] *See, e.g.*, Nat'l Joint Comm. on Learning Disabilities (NJCLD), "*The Documentation Disconnect for Students with Learning Disabilities: Improving Access to Postsecondary Disability Services*, 30 LEARNING DISABILITY QUARTERLY, no. 4 (Fall 2007), pp. 265-274.

[100] *See generally id.*

[101] *See, e.g.*, Guckenberger v. Boston Univ., 974 F. Supp. 106, 135-36 (D. Mass. 1997) (concluding that a private university's "requirement mandating retesting for students with learning disabilities [every three years] screened out or tended to screen out the learning disabled within the meaning of the federal law," violating the ADA).

reinforced the breadth of the ADA's and Section 504's protection,[102] with its implementing regulations explaining that:

> The primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of "disability." The question of whether an individual meets the definition of "disability" under this part should not demand extensive analysis.[103]

Also since the passage of the ADA Amendments Act, IHEs and professional organizations have prepared their own informal guidance for disability support services staff, professors, and anyone else responsible for confirming a student's disability and request for accommodations.[104] Current guidance for IHEs tends to support the use of postsecondary students' past evaluations for special education services or accommodations under Section 504, or other information from external or third parties, as potentially useful supporting documentation but not necessarily required for determining a disability.[105]

Placements in Preschool, Elementary and Secondary Education

Public School Placements

Determining an appropriate public school placement for a child with a disability calls for similar considerations under both the IDEA and Section 504. However, as with many other aspects of P-12 education for children with disabilities discussed in this report, there are more specific provisions on placement decisions in the IDEA than in Section 504. For example, the IDEA requires that a placement decision for a child with a disability be determined at least annually; be based on the child's IEP; and be made by a group of people who are knowledgeable about the child, the meaning of the evaluation data, and the placement options, including the child's parents.[106] In comparison, Section 504 does not require placement decisions to be determined at any particular time interval. Nor does it require those decisions to be based on a child's educational plan under Section 504 or include specific persons as a part of the deliberations—parents included.[107]

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[102] 42 U.S.C. § 12101(b)(1).

[103] 28 C.F.R. § 35.101(b).

[104] *See generally* Ass'n on Higher Educ. and Disability (AHEAD), *Supporting Accommodation Requests: Guidance on Documentation Practices* (Apr. 2012), https://edgecastcdn.net/006FDC/AU/PDF/AHEAD_Supporting-Accommodation-Requests%5B2%5D.pdf.

[105] *See id.*

[106] 20 U.S.C. § 1412(a)(5).

[107] ED's Section 504 regulations instead speak only in general terms about how a school should go about deciding the placement of an eligible child with a disability. *See* 34 C.F.R. §104.35(c) (requiring a recipient to "(1) draw upon information from a variety of sources . . . (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision" allows the child, "to the maximum extent appropriate," to receive his or her education alongside children without disabilities).

In other aspects of their placement provisions, the IDEA and Section 504 are more alike. For example, like the IDEA, Section 504 regulation requires that a child with a disability be placed in the regular educational environment to the maximum extent appropriate to the needs of the child.[108] Under the IDEA and its implementing regulations, when determining a child's placement, states must have in effect policies and procedures to ensure that LEAs are providing a free appropriate public education in the least restrictive environment (LRE)—that children with disabilities, in other words, receive their education alongside children who do not have disabilities, to the maximum extent appropriate.[109] Section 504's regulations do not use the same terminology as the IDEA—there is no express mention of an LRE, for instance—but both require, in academic and nonacademic settings (e.g., lunch, recess), that children with disabilities be educated with their nondisabled peers "to the maximum extent appropriate to [their] needs."[110]

Under the IDEA, LEAs "must ensure that a continuum of alternative placements [are] available to meet children's needs for special education and related services."[111] This includes "instruction in regular classes," with the provision of supplementary services when appropriate, as well as "special classes, special schools, home instruction, and instruction in hospitals and institutions."[112] In contrast to IDEA's focus on a continuum of services to enable an appropriate placement for each child with a disability, Section 504's main concern, as a civil-rights law, is to ensure that children with disabilities are not discriminated against in their placements, so that children with disabilities can participate whenever possible in academic and nonacademic activities alongside their peers without disabilities.[113] In cases where a child with a disability does need to attend a facility specifically for children with disabilities, the LEA must ensure that the facility and the services and activities it provides are "comparable to the LEA's other facilities, services, and activities."[114]

Unlike the IDEA, the Section 504 regulations do not mandate the use of an IEP, though an IEP that satisfies the IDEA will also satisfy Section 504.[115] And the regulations implementing Section 504, unlike those under the IDEA, do not detail how a student's educational plan developed under Section 504—often called a "504 plan"—must be created.[116] Thus, for example, while the IDEA specifies the members who must be invited to participate in a child's IEP team including the child's parents,[117] no similar requirement appears in Section 504 or its regulations.[118]

In addition, any accommodations, special education, and related services described in a student's IEP or 504 plan must be implemented in all of the student's classes, whether they are special

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[108] 34 C.F.R. § 104.34 (Section 504); 20 U.S.C. § 1412(a)(5) (IDEA).

[109] 34 C.F.R. §§ 300.114, 300.116.

[110] *Id.* § 104.34(a).

[111] 34 C.F.R. § 300.115(a).

[112] *Id.* § 300.115(b).

[113] *Id.* § 104.34(b).

[114] *Id.* § 104.34(c).

[115] *Id.* § 104.33(b)(2); *see also* Mark H. v. Lemahieu, 513 F.3d 922, 933 (9th Cir. 2008) (concluding, based on ED's regulations, "that adopting a valid IDEA IEP is sufficient but not necessary to satisfy the [Section] 504 FAPE requirements").

[116] *See* U.S. Dep't of Educ., Office for Civ. Rights, *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, http://www.ed.gov/about/offices/list/ocr/504faq.html.

[117] 20 U.S.C. § 1414(d)(1)(B).

[118] 34 C.F.R. § 104.35(c). Section 504 requires "that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options," but does not require certain people or categories of people (e.g., parents or the classroom teacher) always be included in that group.

education classes, regular education classes, or accelerated classes. For example, ED has determined that denying students with disabilities access to accelerated programs such as Advanced Placement and International Baccalaureate classes violates Section 504 regulations as well as the regulations implementing the IDEA.[119] Even though schools may have eligibility requirements for such courses, ED has concluded that both sets of regulations make it "unlawful to deny a student with a disability admission to an accelerated class or program solely because of that student's need for special education or related aids and services."[120]

Private School Placements

Because the IDEA is designed to improve the education of all children with qualifying disabilities, the act also provides benefits and services to eligible children enrolled by their parents in private school.[121] As a result, the IDEA as well as ED's implementing regulations each have extensive provisions addressing children with disabilities who attend private schools.[122] Those provisions range from funding conditions[123] to LEAs' and State Education Agencies' (SEAs') responsibilities under Child Find[124] to the procedural safeguards protecting families of children with disabilities in private schools.[125] Most of the IDEA's provisions on private school placements, however, fall into two broad categories: those related to children placed in or referred to private schools by public agencies,[126] and those related to children enrolled in private schools by their parents.[127] Together, these provisions outline the various procedural, financial, and educational responsibilities of SEAs, LEAs, private schools, and parents of children with disabilities in private schools, depending on who decided to place the child in private school.[128]

In contrast, the Section 504 regulations addressing students with disabilities in private schools do not address SEAs, LEAs, or parents of children with disabilities. They instead outline general responsibilities toward students with disabilities that are incumbent on any private educational institution receiving federal financial assistance. Thus, under Section 504 regulations, a private elementary or secondary school that receives federal funds "may not exclude a student with a disability if the student can, with minor adjustments, be provided an appropriate education within that institution's program or activity."[129] Nor may a recipient of federal funds charge more to educate students with disabilities than those without disabilities, according to ED's Section 504

[119] U.S. Dep't of Educ., Office for Civ. Rights, *Dear Colleague Letter: Access by Students with Disabilities to Accelerated Programs* (Dec. 26, 2007) (analyzing access to accelerated class and programs under Section 504 and IDEA regulations), http://www.ed.gov/about/offices/list/ocr/letters/colleague-20071226.html. Because "Title II [of the ADA] provides no lesser protections than does Section 504," in ED's view a violation under Section 504 will also make out a violation of the ADA. *Id.*

[120] *Id.*

[121] *See generally* U.S. Dep't of Educ., *The Individuals with Disabilities Education Act: Provisions Related to Children with Disabilities Enrolled by their Parents in Private Schools* (Mar. 2011).

[122] 20 U.S.C. § 1412(a)(10); 34 C.F.R. §§ 300.129-144.

[123] *See* 34 C.F.R. § 300.133.

[124] *See id.* § 300.131.

[125] *See id.* § 300.140.

[126] 20 U.S.C. § 1412(a)(10)(B).

[127] *Id.* § 1412(a)(10)(A).

[128] *Id.* § 1412(a)(10).

[129] 34 C.F.R. § 104.39(a).

regulations, "except to the extent that any additional charge is justified by a substantial increase in cost to the federal funding recipient."[130]

Postsecondary Education: Access and Admissions

The IDEA requires IEP teams to include postsecondary transition goals and services in each student's IEP beginning no later than when students are 16 years old.[131] Transition goals and services are individualized. For a student planning to pursue postsecondary education, transition services could include helping the student select colleges to apply to or complete applications; obtain accommodations, such as extended time on standardized college placement tests; practice self-advocacy skills; or any other services that the IEP team agrees would help the student prepare for postsecondary education. However, no matter what transition services students with disabilities receive in high school, those transition services will end once they exit the P-12 public school system and enter an IHE.

At the postsecondary level, Section 504 and the ADA require IHEs to provide broad nondiscrimination protection to students who have a disability or who are regarded as having one.[132] However, Section 504 and the ADA do not require IHEs to seek out students with disabilities to provide them with these protections, to evaluate students who are suspected of having a disability, or to arrange proactively for accommodations for students who had been evaluated and found eligible for services under IDEA, Section 504, or the ADA. At the postsecondary level, students must self-identify as having a disability, provide appropriate documentation of their disability, and arrange with campus disability support services for any accommodations and services to which they may be entitled.[133]

Section 504 and the ADA protect students applying for postsecondary education from discrimination in two basic ways: (1) in the eligibility requirements and admissions policies and procedures adopted by those institutions, and (2) following admission, in any activities, programs, aid, benefits, or services offered to students.[134] ADA regulations also prohibit public accommodations, including IHEs, from imposing or applying eligibility criteria that screen out individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations they offer.[135] Section 504 regulations likewise prohibit discrimination in admissions policies, including admissions testing.[136] And the ADA regulations extend those prohibitions to private entities that "offer[] examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes," requiring them to provide those examinations or courses "in a

[130] *Id*. § 104.39(b).

[131] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

[132] *See* 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(1)(C); *see also, e.g.*, S.H. v. Lower Merion Sch. Dist., 729 F.3d 248, 260 (3d Cir. 2013) ("Both [Section 504] and [the] ADA extend their protections not only to individuals who actually are disabled, but also to individuals who are 'regarded as' having a disability.").

[133] *See* U.S. Dep't of Educ., Office for Civ. Rights, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities* (last rev. Sept. 2011), https://www2.ed.gov/about/offices/list/ocr/transition.html.

[134] 34 C.F.R. §104.43(a).

[135] 28 C.F.R. §36.301.

[136] 34 C.F.R. §104.42.

place and manner accessible to persons with disabilities or offer alternative accessible arrangements."[137]

Free Appropriate Public Education

FAPE in Preschool, Elementary and Secondary Education

At the P-12 level, the IDEA, Section 504, and the ADA all guarantee students with disabilities a free appropriate public education.[138] Those provisions, while similar, are not identical.[139] Their differences largely have to do with details,[140] but they generally can be traced to a more basic difference in statutory design: "the IDEA guarantees individually tailored educational services, while Title II [of the ADA] and [Section] 504 promise nondiscriminatory access to public institutions."[141] The IDEA's provisions addressing a FAPE are consequently much more detailed than their counterparts in Section 504, the same that apply, according to ED, under Title II of the ADA.[142]

These differences among the three statutory schemes have also led to some judicial disagreement about how to relate their violations: specifically, whether denying an eligible child the IDEA's procedural or substantive guarantees also amounts to disability discrimination, in violation of Section 504 (and, by extension, Title II of the ADA). At least some of the lower courts have found these violations to overlap, so that a valid claim under the IDEA will "almost always" support one under Section 504.[143] Other courts, however, have taken the opposite view: for them, "something more than a mere failure to provide the 'free appropriate education' required by [IDEA] must be shown" before those courts will draw the discriminatory inference required for a violation of

[137] 28 C.F.R. § 36.309.

[138] 34 C.F.R. § 104.33(a). *See also* U.S. Dep't of Educ., Office for Civ. Rights, *Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973*, http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html. As OCR has explained, the "general non-discrimination provision of the Title II regulation" under the ADA "incorporate[]" the same "requirements regarding the provisions of a free appropriate public education (FAPE), [as] specifically described in the Section 504 regulations." *Id.*; *see* 28 C.F.R. § 35.103(a) (providing that Title II of the ADA "shall not be construed to apply a lesser standard than the standards applied under" Section 504).

[139] Marke H. ex rel. Michelle H. and Natalie H. v. Lemahieu, 513 F.3d 922, 933 (9th Cir. 2008) (noting that Section 504 and the IDEA "overlap[] in some respects" while also "contain[ing] significant differences").

[140] A major point of distinction concerns the design of a FAPE: "unlike [a] FAPE under the IDEA, [a] FAPE under [Section] 504 is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the 'design' of a child's educational program." *Id.* at 933 (comparing 34 C.F.R. § 104.33(b)(1) alongside 20 U.S.C. §§ 1401(9), 1414(d)(1)(A)(i)(II)).

[141] Fry v. Napoleon Cmty. Sch., 137 S.Ct. 743, 756 (2017).

[142] *See* U.S. Dep't of Educ., Office for Civ. Rights, *Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973* (Aug. 2010) (describing these regulations and noting that "the requirements regarding the provisions of a free appropriate public education (FAPE), specifically described in the Section 504 regulations, are incorporated in the general non-discrimination provisions of the Title II regulation"), https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html.

[143] *See, e.g.*, Andrew M. v. Del. County Office of Mental Health and Mental Retardation, 490 F.3d 337, 350 (3d Cir. 2007) (reasoning that "when a state fails to provide a disabled child with a free appropriate public education" in violation of the IDEA, "it also violates [Section 504] because it is denying a disabled child a guaranteed education merely because of the child's disability"). The reverse, however, clearly need not be true: a violation of Section 504 or the ADA need not implicate the IDEA at all. *See Fry*, 137 S.Ct. at 755-56 (noting that "the statutory differences [between the IDEA and Section 504] mean that a complaint brought under Title II [of the ADA] and [Section] 504 might instead seek relief for simple discrimination, irrespective of the IDEA's FAPE obligation").

Section 504.[144] What that something is also appears to vary somewhat by court, but several have insisted on a showing of at least "bad faith or gross misjudgment . . . before a [Section] 504 violation [will] be made out" in this context.[145]

Whatever its differences with Section 504, Part B of the IDEA nevertheless mandates that every recipient state provide a FAPE to all disabled children between the ages of 3 and 21 residing "within its borders."[146] "An eligible child [therefore] acquires a 'substantive right' to such an education once a State accepts the IDEA's financial assistance," and the state's denial of that education therefore entitles eligible students to legal relief, whether in the form of an injunction for the improperly denied services or money damages.[147]

What a FAPE entails, and what demands it puts on a school district, will therefore vary from student to student. At a minimum, however, a FAPE consists of "special education and related services"—"specially designed instruction," in other words, that "meets the unique needs of a child with a disability.[148] And for that instruction to qualify as a FAPE, it must also be "provided at public expense, under public supervision, and without charge; meet[] the standards of the [SEA];" encompass preschool through secondary school; and conform to the student's IEP.[149] A child's IEP accordingly "serves as the 'primary vehicle' for providing [him or her] with the promised FAPE," by specifying the particular special education and related services that the LEA will provide to meet the child's needs.[150]

Apart from these procedural minimums, the substantive guarantee of a FAPE remains highly general.[151] And that generality has provoked one of the most commonly litigated questions under the act: What does an "appropriate" public education require of an IEP?[152] In an early decision under the act—*Board of Education v. Rowley*[153]—the U.S. Supreme Court appeared to set the bar fairly low.[154] There the Court concluded that a school district could satisfy its responsibility of

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[144] Sellers v. Sch. Bd., 141 F.3d 524, 528-29 (4th Cir. 1998) (internal quotation marks omitted) (quoting Monahan v. Nebraska, 687 F.2d 1164, 1170 (8th Cir. 1982)); *accord* Lunceford v. Dist. of Columbia Bd. of Educ., 745 F.2d 1577, 1580 (D.C. Cir. 1984).

[145] *Sellers*, 141 F.3d 528-29.

[146] Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 181 (1982); *see* 20 U.S.C. § 1414. The IDEA does provide some age-related exceptions to its otherwise blanket requirement of a FAPE. *See* 20 USCS § 1412(1)(1)(B); *see also* 34 C.F.R. § 300.102 (further detailing these exceptions).

[147] *Fry*, 137 S.Ct. at 749-50 (quoting Smith v. Robinson, 468 U.S. 992, 1010 (1984)). As *Fry* makes clear, however, to vindicate this statutory right to a FAPE an eligible child must first seek relief through the formal administrative procedures mandated by the IDEA. *See id.* (explaining these dispute-resolution mechanisms under 20 U.S.C. § 1415). Only after exhausting those procedures completely will the child have the right to seek judicial review of the alleged denial in federal court. *Id.* (citing § 1415(i)(2)(A)). And as the Court also explained in *Fry*, the IDEA requires the child to exhaust those administrative procedures regardless of whether he or she is also alleging related violations of Section 504, the ADA, or other "similar laws, so long as "the substance, or gravamen, of [his or her] complaint" is the denial of a FAPE. *Fry*, 137 S.Ct. at 752 (explaining that § 1415(l) of the act compels administrative exhaustion in those circumstances).

[148] 20 U.S.C. § 1401(9), (29).

[149] *Id.* § 1401(9).

[150] *Fry*, 137 S.Ct. at 749 (quoting Honig v. Doe, 484 U.S. 305, 311 (1988)); *see also* 20 U.S.C. § 1414(d).

[151] DEREK W. BLACK, EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM 504 (2d ed. 2016) (describing the term as among the "most ambiguous" in the IDEA).

[152] *Id.* (noting that this question continues to be "heavily litigated").

[153] 458 U.S. 176 (1982).

[154] As one court put it, *Rowley* read the IDEA to require "the educational equivalent of a serviceable Chevrolet [be provided] to every handicapped student," not "a Cadillac." Doe v. Bd. of Educ., 9 F.3d 455, 459-60 (6th Cir. 1993).

providing a FAPE so long as it had met two basic conditions. The school district had to have observed all of the IDEA's procedural rules, and it had to have provided an IEP "reasonably calculated" to "confer some educational benefit" on the child.[155]

But that latter condition—requiring an IEP that conferred "some educational benefit"—did little to resolve the basic ambiguity in the IDEA's guarantee of a FAPE: How much benefit would make an IEP "appropriate"? The lower federal courts were therefore left to fashion for themselves a more concrete standard for deciding whether an IEP had provided an eligible child with enough of a benefit to satisfy *Rowley*. On this point some courts took a minimalist view, requiring an IEP to provide at least *some* educational benefit[156]—a benefit, in other words, that is "barely more than *de minimis*."[157] Other courts, however, read *Rowley* as calling for much more, demanding evidence that an IEP had provided "meaningful benefit to the child."[158]

Faced with this circuit split, in 2017, the Supreme Court took the opportunity in *Endrew F. v. Douglas County School District*[159] to clarify just how much of a benefit an eligible child must receive through an IEP.[160] The Court did so by returning to its *Rowley* standard: to provide an eligible child a FAPE under the IDEA, the Court explained, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstance."[161] Thus, "for a child fully integrated in the regular classroom, an IEP typically should . . . be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'"[162] The Court cautioned, however, that an appropriate measure of "progress" would depend on the child's circumstances—and especially on the child's integration

[155] *Id.* at 207, 200.

[156] *See, e.g.*, Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1313, 1313 n.7 (10th Cir. 2008) (applying a "more than de minimis" standard under *Rowley* while declining a heightened "meaningful benefit" standard).

[157] *See* Endrew F. v. Douglas County Sch. Dist. RE–1, 137 S. Ct. 988, 1001 (2017) (describing this standard as the "merely more than *de minimis* test").

[158] Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 268 (3d Cir. 2014) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 268 (3d Cir. 2012)); *accord* Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 293 (5th Cir. 2009).

[159] Endrew F. v. Douglas County Sch. Dist. RE–1, 137 S. Ct. 988 (2017).

[160] The Court did not revisit the other condition laid down in *Rowley*—concerning the IDEA's "procedural requirements for the preparation of an IEP," *Rowley*, 458 U.S. at 206—because it had no occasion to do so: the challenge in *Endrew F.* focused solely on the school district's "substantive obligation under the IDEA" for a FAPE. *Endrew F.*, 137 S.Ct. at 998. Those procedural requirements do matter, however: several lower federal courts, pointing to *Rowley*, have found school districts liable for denying a student a FAPE as a result of procedural lapses while the parties developed the IEP. *See, e.g.*, Jackson v. Franklin Cty. Sch. Bd., 806 F.2d 623, 628-29 (5th Cir. 1986) ("We agree with the Fourth Circuit in finding that failures to meet the act's procedural requirements are 'adequate grounds by themselves for holding that the school failed to provide a free appropriate public education, as mandated by the [IDEA].") (quoting Hall v. Vance Cty. Bd. of Educ., 774 F.2d 629, 635 (4th Cir. 1985)). Some courts, however, have refused to find a denial of a FAPE over a procedural lapse unless that lapse "affected the substantive rights of the parent or child." L.M. v. Capistrano Unified Sch. Dist., 556 F.3d 900, 909 (9th Cir. 2009); *accord* DiBuo ex rel. DiBuo v. Bd. of Educ. of Worcester Cty., 309 F.3d 184, 190 (4th Cir. 2002) ("[O]ur holding in *Hall* does not mean that violation of a procedural requirement of the IDEA (or one of its implementing regulations), in the absence of a showing that the violation actually interfered with the provision of a FAPE to the disabled child, constitutes a sufficient basis for holding that a government entity failed to provide that child a FAPE.").

[161] *Rowley*, 458 U.S. at 999.

[162] *Id.* (quoting *Rowley*, 458 U.S. at 203-04). The Court cautioned that that was not an "inflexible rule," even for the child integrated in the regular classroom: it therefore "declined to . . . hold . . . that 'every handicapped child who is advancing from grade to grade . . . is automatically receiving a [FAPE].'" *Id.* at 1000 n.2 (quoting *Rowley*, 458 U.S. at 203 n.25).

into the regular classroom.[163] For children with disabilities not integrated into the regular classroom, an "appropriate" IEP therefore "need not aim for grade-level advancement."[164]

Endrew F. clearly rejected, then, the more minimalist view of a FAPE. "[T]he IDEA demands more" from an IEP than the "barely more than *de minimis* progress" that the lower court upheld there.[165] A child's IEP must instead be "appropriately ambitious in light of his circumstances," so that that child, like every other, "ha[s] the chance to meet challenging objectives" despite his differing goals.[166] Although the Court did not explicitly compare its refined standard in *Endrew F.* with the view from the other side of the circuit split—that an appropriate IEP needed to confer a *meaningful* benefit on a child—several lower courts have taken *Endrew F.* to vindicate that meaningful-benefit standard nonetheless.[167] As the U.S. Court of Appeals for the First Circuit explained, *Endrew F.* appears to call for an IEP of exactly the same quality that that circuit had expected all along under *Rowley*.[168] Thus, "[a]t a bare minimum," that standard demands an IEP that includes "the child's present level of educational attainment, the short-and long-term goals for his or her education, objective criteria with which to measure progress toward these goals, and the specific services to be offered."[169] Whether the other circuits will also agree on that "bare minimum" remains to be seen.[170]

Postsecondary Education and a FAPE

The right of students with disabilities to a FAPE under the IDEA has a still more definite limit: it does not extend to students in colleges, universities, or any other postsecondary education or training programs.[171] Instead, the IDEA requires only that LEAs provide qualifying students with disabilities a FAPE until they exit high school—whether by graduating, dropping out—or until they surpass the maximum age for IDEA services, 21 years old.[172] Section 504 and the ADA, on the other hand, have no such limit. They instead protect students of all ages from discrimination based on their disability, both during the admissions process and while enrolled as a student.[173]

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[163] *Id.* at 1000.

[164] *Id.*

[165] *Id.* at 1001.

[166] *Id.* at 1000.

[167] *See, e.g.*, K.D. ex rel. Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018) (concluding that "*Endrew F.*'s language parallels that of our precedents"); L.H. v. Hamilton Cty. Dep't of Educ., 900 F.3d 779, 792 n.5 (6th Cir. 2018) (noting that *Endrew F.* did not itself use the "phrase of 'meaningful educational benefit,' though its language is functionally the same").

[168] Johnson v. Boston Pub. Sch., 906 F.3d 182, 194-95 (1st Cir. 2018).

[169] *Id.*

[170] The U.S. Court of Appeals for the Eighth Circuit has already signaled that it might take a less definite view of what a FAPE requires of an IEP, even after *Endrew F*. *See* I.Z.M. v. Rosemount-Apple Valley-Eagan Public Sch., 863 F.3d 966, 972 (8th Cir. 2017) (concluding, with citation to *Endrew F.*, that "the obligation enforceable under the IDEA is to provide, if the IEP so requires, instruction that is 'sufficient to enable' the child to attain [a] specified level of proficiency," without articulating any similar "bare minimum").

[171] *See* 20 U.S.C. § 1401(9) (limiting a FAPE to "an appropriate preschool, elementary school, or secondary school education").

[172] States are required to provide free appropriate public education to children ages 3 through 5 and 18 through 21, unless providing FAPE to children in those age ranges is inconsistent with State law or practice. *See* 20 U.S.C. § 1412(a)(1)(B). According to information provided to CRS by the U.S. Department of Education Budget Service, in 2015, 20 states provided children with disabilities a FAPE until the age of 21. The remaining states ended their provision of a FAPE once students reached either 18, 19, or 20 years old.

[173] As noted, Section 504's nondiscrimination mandate applies to any recipient of federal financial assistance, while the ADA covers most public and private colleges and universities, except those considered a "religious entity." *See supra*

Like the IDEA, however, Section 504's regulations ensure a FAPE only to students in P-12 public schools,[174] a guarantee that ED has read to be "incorporated in the general nondiscrimination provisions of the Title II regulation" under the ADA as well.[175]

Adaptations, Accommodations, and Services

Preschool, Elementary, and Secondary Education

To receive services under the IDEA, a child must be evaluated and found eligible for an IEP under one of the IDEA disability categories and must because of that disability require special education and related services to benefit from public education.[176] In the IDEA, "special education" means instruction designed to meet the unique needs of a child with a disability, provided at no cost to the child's parents.[177] It may include instruction conducted in both academic and nonacademic settings, including in the classroom, in the home, and in hospitals and institutions, as well as instruction in physical education.[178] In comparison, "related services" are intended to assist a child with a disability to benefit from special education—such as nursing services during the school day for a student who relies on a ventilator.[179] Among the related services provided by the IDEA are speech-language pathology and audiology services; interpreting services, psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services; and, certain medical and school nurse services.[180]

Besides special education and related services, under the IDEA and implementing regulations children with disabilities may receive supplementary aids and services and other supports in regular education classes, and in extracurricular and nonacademic settings, to enable them to be educated with nondisabled children to the maximum extent appropriate.[181] The combination of special education, related services, and other supplementary aids and services a child receives is determined by the child's IEP team, taking into consideration the child's academic, developmental, and functional needs.[182]

As discussed, the IDEA defines a FAPE as special education and related services that are provided at public expense, meet the standards of the SEA, and conform to the student's IEP.[183] As part of their right to a FAPE, each child receiving services under the IDEA must have an IEP

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note 25 and accompanying text.

[174] 34 C.F.R. § 104.33 (requiring a FAPE only from a "recipient that operates a public elementary school or secondary education program or activity").

[175] *See* U.S. Dep't of Educ., Office for Civ. Rights, *Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973* (Aug. 2010), https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html.

[176] 20 U.S.C. § 1401(3)(A).

[177] *Id.* § 1401(29).

[178] *Id.* For more information on special education and related services, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo.

[179] *See* Cedar Rapids Comm. Sch. Dist. v. Garret F., 526 U.S. 66 (1999) (holding that nursing services for a ventilator-dependent student during school hours counted as a "related service" under the IDEA).

[180] 20 U.S.C. § 1401(26).

[181] *See id*. § 1401(33); 34 C.F.R. §300.42.

[182] 20 U.S.C. § 1414(d)(3)(A)(iv).

[183] *Id.* § 1401(9).

stating the specific special education and related services the LEA will provide to meet his or her needs.[184] Unlike the IDEA, an "appropriate education" under Section 504 regulation is defined as the provision of regular or special education and related aids and services designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met and that comply with procedural requirements.[185] Note, however, that the IDEA specifically requires the provision of *special* education and related services, while Section 504 requires the provision of *regular or special* education and related aids and services. Thus, a child with a Section 504 plan may be served by a "regular" education with related aids and services, while under the IDEA a qualifying child must be provided "special education."[186]

Postsecondary Education: Adaptations and Accommodations

To receive accommodations or services under the ADA or Section 504 at the postsecondary level, students with disabilities must seek out the person or office at their IHEs responsible for arranging accommodations for students with disabilities, request the accommodations they need, and provide the documentation and/or personal history necessary to support their request. ED's regulations implementing Title II of the ADA include specific requirements to guide disability and accommodation services personnel at IHEs when considering such requests. Thus, for example, the regulations instruct IHEs,

> [w]hen considering requests for modifications, accommodations, or auxiliary aids or services, [to] give[] considerable weight to documentation of past modifications, accommodations, or auxiliary aids or services received in similar testing situations, as well as such modifications, accommodations, or related aids and services provided in response to an [IEP] provided under the [IDEA] or a . . . Section 504 Plan.[187]

Once students have provided adequate documentation of their disabilities to the appropriate person or office, Section 504 and Title II of the ADA protect them from discrimination based on their disabilities.[188] Section 504's regulations on postsecondary education programs and activities elaborate on IHEs' responsibilities for adopting and maintaining nondiscriminatory practices toward students with disabilities, including through accommodations, modifications, or adaptations across many contexts, from course examinations to housing and counseling services to financial and employment assistance.[189]

[184] *Id.* §§ 1412(a)(4), 1414(d).

[185] 34 C.F.R. § 104.33(b)(1).

[186] *Compare* 34 C.F.R. §§ 104.34-36 (outlining general requirements under Section 504 for appropriate educational settings, evaluations and placements, and procedural safeguards for every "qualified handicapped person" in the "recipient's jurisdiction") *with* 34 C.F.R. §§ 300.323 et seq. (requiring under the IDEA that "[a]t the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP").

[187] 28 C.F.R. § 36.309(b)(1)(v).

[188] 34 C.F.R. § 104.43(a).

[189] *Id*. §§ 104.44-104.47.

Table 1. IDEA, Section 504, and ADA: Summary and Comparison of Selected Provisions

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
Original Law			
	Education for All Handicapped Children Act of 1975 (P.L. 94-142)	Rehabilitation Act of 1973 (P.L. 93-112)	Americans with Disabilities Act of 1990 (P.L. 101-336)
Most Recent Amendments[a]			
	Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446)	ADA Amendments Act of 2008 (P.L. 110-325) included conforming amendments to the Rehabilitation Act of 1973 that affect the meaning of disability in Section 504 of the Rehabilitation Act.	ADA Amendments Act of 2008 (P.L. 110-325)
Type and Scope of Law			
	Authorizes grants for states and local education agencies to ensure a free appropriate public education to children who have a disability falling in one of several statutory categories.	Prohibits discrimination based on disability in programs or activities that receive federal financial assistance, including parochial or private schools.	Prohibits discrimination based on disability across a variety of contexts, public and private, irrespective of whether they receive federal financial assistance, including private, nonparochial schools.
Purpose			
	IDEA's primary purpose is "(A) 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; (B) to ensure that the rights of children with disabilities and parents of such children are protected; and (C) 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(d)(1); P.L. 108-446, § 601(d)(1)) Additional purposes include providing early intervention services for infants and toddlers with disabilities and their families and tools for educators and parents to improve educational results for children with disabilities. (20 U.S.C. § 1400(d)(2)-(4))	Section 504's purpose is to ensure "no otherwise qualified individual with a disability in the United States … shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C. § 794; P.L. 93-112, § 504)	The ADA's purposes are "(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." (42 U.S.C. § 12101(b))

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
Age Range			
	Part B of the IDEA authorizes a grant program supporting eligible children with disabilities 3 to 21 years old[b] or until high school exit, whichever comes first. (20 U.S.C. §§ 1411 et seq.; P.L. 108-446, § 611) Part C of the IDEA authorizes a grant program supporting infants and toddlers with disabilities ages birth through two years old and their families. (20 U.S.C. § 1444)	Section 504 applies to people of any age accessing programs that receive federal funds. (29 U.S.C. § 705(9)(B))	The ADA protects people with disabilities of all ages from discrimination when accessing facilities and services from state and local governments, telecommunications companies, public accommodations, and commercial facilities. (42 U.S.C. §§ 12101 et seq.)
Funding and Funding Implications			
Funding and Funding Implications	Funding for Part B of the IDEA is permanently authorized. Part B contains two grant programs, the Section 611grants-to-states program for school-aged children and the Section 619 state grant program for preschool children with disabilities, which together account for about 95% of total IDEA funding. Part C of the IDEA authorizes a grant program to aid each state in implementing a system of early intervention services for infants and toddlers with disabilities and their families.[c] In FY2019, $13.2 billion was appropriated for IDEA Part B and C programs. (P.L. 108-446, §§ 611, 619, § 631)	Schools do not receive federal funding for students with disabilities served under Section 504, and LEAs may not use IDEA funds for students served solely by 504. Federal funding provided to schools through other programs may be withdrawn, however, if schools do not comply with Section 504. (29 U.S.C. § 794)	Federally funded training and technical assistance centers provide information on how to implement ADA provisions, but there are no federal grants to help schools directly implement ADA accessibility requirements for their facilities, technology, or instructional materials. (42 U.S.C. § 12206)
Determination of Eligibility: Definitions and Evaluations			
Definitions	The IDEA contains a categorical definition of disability. To qualify as a "child with a disability" under it, students must meet two criteria: (1) they must be a child with one of the disabilities listed in the IDEA (see below) and (2) they must require special education and related services because of their disability. The 13 IDEA disability categories that apply to all school-aged students are: • autism, • deaf-blindness, • deafness, • emotional disturbance, • hearing impairment, • intellectual disability, • multiple disabilities, • orthopedic impairment,	Section 504 defines an individual with a disability as a person with a physical or mental impairment that substantially limits one or more major life activities. It specifies that major life activities included self-care, walking, seeing, hearing, speaking, breathing, working, performing manual tasks and learning. The ADA Amendments Act of 2008 (ADAAA, P.L. 110-325; see next column) includes a conforming amendment to the Rehabilitation Act of 1973 that applies the ADAAA's rules regarding the meaning	The ADA states: "The term `disability' means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." (P.L. 101-336, §3(2)) The ADAAA broadened the scope of the ADA's definition of "disability," by further defining phrases used in the definition of disability (e.g., "major life activities") and through new "rules of construction," which explain that Congress wants the

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
	• other health impairment, • specific learning disability, • speech or language impairment, • traumatic brain injury, and • visual impairment including blindness. All categories are specified in statute with the exceptions of deaf-blindness and multiple disabilities, which are specified in regulations. In addition, both the statute and regulations state that at the discretion of the state and the LEA, the term "child with a disability" for a child ages 3 through 9 (or any subset of that age range, including ages 3 through 5), may include a child experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3); P.L. 108-446, § 602(3); 34 C.F.R. § 300.8)	of disability to Section 504. (42 U.S.C. § 12102)	ADA definition of disability to be interpreted broadly. (P.L. 110-325, § 4; 42 U.S.C. § 12102) Additional words and phrases in the ADA definition of disability are defined themselves and examples of their meanings are provided in the ADA's Title II and Title III regulations (28 C.F.R. § 35.108 and § 36.105)
"Child Find" or the Party Responsible for Determining the Presence of a Disability	*P-12:* IDEA "Child Find" provisions require that all persons from birth through 21 years old residing in a state, who are in need of early intervention or special education and related services, are identified, located, and evaluated, and a practical method is developed and implemented to determine which children with disabilities are receiving needed early intervention or special education and related services. Child Find applies to all children with disabilities, regardless of the severity of their disabilities, including those who are homeless, wards of the state, or attending private schools. (20 U.S.C. §§ 1412(a)(3), (10)(A)(ii); § 1435(a)(5)) *Postsecondary*: N/A	*P-12:* Section 504 regulations require recipients of federal funds that operate public elementary or secondary education programs to annually: (1) undertake processes to identify and locate every qualified child with a disability residing in their jurisdiction who is not receiving a public education; and (2) take appropriate steps to notify those children and their parents or guardians of the funding recipients' duty to evaluate children for the presence of a disability requiring special education or related services, and, if those children are determined to have a disability, to provide them with a free appropriate public education. (34 C.F.R. §104.32-35)	*P-12 and Postsecondary:* The ADA's statute and regulations contain no requirements that schools or other institutions conduct Child Find or any other activity to locate and identify people with disabilities that may be protected by the ADA. (42 U.S.C. §§1 2101 et seq.; 28 C.F.R. §§ 35.101 et seq.)

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
		Postsecondary: Students at the postsecondary level are responsible for notifying their program about their disability and their need for services or accommodations. There are no requirements that IHEs, whether public or private, seek out students with disabilities who may qualify under Section 504. (34 C.F.R. § 104.41 et seq.)	
Evaluation	*P-12:* The IDEA[c] contains extensive provisions related to evaluating children for the presence of a disability, including those specifying requirements for: • Child Find services and how to identify children for evaluation; (20 U.S.C. §§ 1412(3), § 1414 (a)(1)) • Parental notice and consent for evaluation (20 U.S.C. § 1414 (c)-(d)) • Time frame for the initial evaluation (20 U.S.C. § 1414 (a)(1)) • Assessment tools and strategies used in evaluations; (20 U.S.C. §§ 1414(b)) • Procedural safeguards afforded children with disabilities and their parents to ensure evaluations are properly conducted and evaluation materials and evaluation procedures are not discriminatory; (20 U.S.C. § 1415) • LEAs to allow for consideration of a child's response to scientific, research-based interventions and to not exclusively require a discrepancy between achievement and intellectual ability, when evaluating a child for a specific learning disability (20 U.S.C. § 1413 (f); § 1414(b)(6)) *Postsecondary:* N/A	*P-12:* Section 504 regulations require recipients of federal funds who operate P-12 education programs to (1) evaluate any child who, because of a disability, needs or is believed to need special education or related services before placing the child in regular or special education or making any later significant change in placement; (2) ensure that tests and other evaluation materials are valid, reliable, administered by trained personnel, and assess specific areas of educational need; and (3) select tests that accurately reflect the student's aptitude or achievement level, or whatever other factor the test purports to measure. (34 C.F.R. § 104.35) *Postsecondary:* Under Section 504 IHEs need not evaluate students to determine whether they have a disability. When confirming students' disabilities and requests for accommodations, IHEs may use many sources of documentation including students' narrative history/self-report, past IDEA or Section 504 evaluations, and other relevant information (e.g., medical records). (34 C.F.R. § 104.3(j)(2))	*P-12 and Postsecondary:* Any educational institution, public or private, covered by the ADA that requests documentation to evaluate a person's disability status must ensure that documentation is reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested. In addition, when considering requests from students with disabilities for modifications, accommodations, or auxiliary aids or services, schools must give considerable weight to documentation of past modifications, accommodations, or auxiliary aids or services the student received in testing situations, or was provided in response to an IEP or Section 504 plan. (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 36.309(b)) The ADA requires services, venues, and other public accommodations "shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered." (42 U.S.C. §§ 12182, 12184; 28 C.F.R. § 36.301(a))

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
Reevaluation	*P-12:* Under the IDEA, reevaluations are required if a student's teacher or parent makes a request or if the LEA determines that a student's educational and service needs, academic achievement, or functional performance warrant a reevaluation. Reevaluations should be conducted no more than once every year and no less than once every three years, unless the child's parent and the LEA agree on a different schedule. Many of the IDEA provisions related to evaluation (see previous Table entry) apply to reevaluation. (20 U.S.C. § 1414(a)-(c)). *Postsecondary:* N/A	*P-12:* Section 504 regulations require LEAs to establish procedures for the periodic reevaluation of students who have been provided special education and related services. Reevaluation procedures consistent with the IDEA are one way to meet this requirement. (34 C.F.R. § 104.35(d)) *Postsecondary:* Section 504 does not require students be reevaluated to substantiate that they have a disability at the postsecondary level. A student's past IEP or Section 504 plan may be considered a form of documentation of a disability. (34 C.F.R. § 104.3(j)(2))	*P-12 and Postsecondary*: The ADA does not address reevaluations.
Types of Service, Protections, Accommodations, and Adaptations Provided			
FAPE: Free Appropriate Public Education	*P-12:* The primary purpose of Part B of the IDEA is to contribute to and help ensure the provision of a FAPE,[b] for children with disabilities in preschool through secondary school education. A "FAPE" means providing special education and related services at public expense, under public supervision, and without charge; which meets the standards of the SEA; and conforms to the student's IEP. (20 U.S.C. §§ 1400(d)(1), 1401(9)) States receiving Part B grants must make a FAPE available to all children with disabilities residing in the state who are between the ages of 3 and 21,[b] including children with disabilities who have been suspended or expelled from school. (20 U.S.C. § 1412(a)(1)) *Postsecondary:* N/A	*P-12:* Section 504 regulations require recipients of federal funds that operate public elementary or secondary education programs or activities to provide each qualified child with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the child's disability, a FAPE, meaning providing regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of students without disabilities are met. (34 C.F.R. § 104.33) *Postsecondary:* N/A	*P-12:* The ADA does not address the provision of a FAPE. *Postsecondary:* N/A
Placements within Public Schools	*P-12:* The IDEA requires that a child's placement be made annually by a group of persons knowledgeable about the child, including his or her parents; be based on the child's IEP; and provide the child with a free appropriate public education in the least restrictive environment (LRE) appropriate to the child. (20 U.S.C. § 1414(e))	*P-12:* Section 504 regulations require placement decisions for a child with a disability to be made by a group of persons, including those knowledgeable about the child, the meaning of the evaluation data, and the placement options. When	*P-12:* The ADA regulations do not address P-12 public school placements, and instead refer to Section 504's provisions, stating that they should "not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
	LRE is a fundamental concept in the IDEA, referring to the requirement that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." When making placement decisions that follow both the FAPE and LRE requirements of IDEA, a child's IEP team must determine the least restrictive environment that will provide the child with an appropriate education (20 U.S.C. § 1412(a)(5)) *Postsecondary:* N/A	making placement decisions, the group must draw upon information from many sources and establish procedures to ensure that information obtained from all relevant sources is documented and reviewed. (34 C.F.R. § 104.35(c)) *Postsecondary:* N/A	regulations issued by Federal agencies pursuant to that title." (29 U.S.C. § 791; 28 C.F.R. § 35.103)
Private School Placements	*P-12:* Under the IDEA, a child with a disability may be placed in a private P-12 school by an LEA if the child's IEP team determines that a private school placement is needed to provide the child a FAPE. In this situation, the private school placement is made at no cost to the parents, and the child has all of the rights of a child with a disability who is served in a public school. (20 U.S.C. § 1412(a)(10)(B)) Alternatively, a child with a disability may be unilaterally placed in a private P-12 school by his or her parents. In this situation, the LEA need not ensure a FAPE for the "parentally placed" child, and the cost of the private school placement is generally paid by the child's parents. The LEA must, however, spend a share of its IDEA funds to provide services to children with disabilities enrolled by their parents in private schools located within the boundaries of the LEA. (20 U.S.C. § 1412(a)(10)) *Postsecondary:* N/A	*P-12:* Section 504's Educational Placement regulations do not address placements in private schools. Section 504's FAPE regulations state that if a private residential placement is necessary to provide a FAPE to a child with a disability, the placement, including nonmedical care and room and board, must be provided at no cost to the child or his or her parents or guardian. However, if an SEA or LEA has made a FAPE available to a child with a disability and the child's parents or guardian choose to place the child in a private school, the LEA or SEA need not pay for the child's education in the private school. (34 C.F.R. § 104.33(c))	*P-12 and Postsecondary*: The ADA does not directly address placements. However, all private schools covered by the ADA must eliminate unnecessary eligibility standards that deny access to individuals with disabilities, and, unless an undue burden or fundamental alteration in the program would result: 1) make reasonable modifications in policies practices and procedures that deny access to individuals with disabilities, and 2) furnish auxiliary aids such as interpreters, note takers or readers when necessary to ensure effective communication. (42 U.S.C. §§ 12181 et seq.; 28 C.F.R. §§ 36.301 et seq.)

Provisions	Individuals with Disabilities Education Act (IDEA)	Section 504 of the Rehabilitation Act	Americans with Disabilities Act (ADA)
Adaptations, Accommodations, and Services	*P-12:* The IDEA requires the provision of special education and related services for each child with an IEP. *Special education* means instruction specially designed to meet the unique needs of a child with a disability, including instruction in physical education. (20 U.S.C. § 1401(29)) *Related services* mean transportation, and such developmental, corrective, and other supportive services a child requires to benefit from special education. Related services may include: • Speech-language pathology and audiology services, • Interpreting services, • Psychological services, • Physical therapy, • Occupational therapy, • Recreation, including therapeutic recreation, • Social work services, • School nurse services designed to enable the child to receive a FAPE as described in the child's IEP, • Medical services, (except medical services for diagnostic and evaluation purposes only), • Counseling services, including rehabilitation counseling, and • Orientation and mobility services. (20 U.S.C. § 1401(26)) In addition, a child with an IEP may receive supplementary aides and services in the regular classroom. The accommodations and services children receive are individualized to their goals and needs as determined by their IEP teams. (*See* Cedar Rapids Community School Dist. v. Garret F., 526 U.S. 66 (1999)) *Postsecondary:* N/A	*P-12:* Section 504 regulations require the provision of regular or special education and related services designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met. Because Section 504 regulations for P-12 require that children with disabilities are provided a FAPE, P-12 students served under Section 504 may receive adaptations and services such as assistive technology or related services like those provided under IDEA (see previous column). (34 C.F.R. §§ 104.31 et seq.) *Postsecondary:* In IHEs, nondiscriminatory practices toward students with disabilities required by Section 504 include providing accommodations, modifications, or adaptations in various campus activities and services. Common adaptations and accommodations that students may experience in both P-12 and IHEs include extended time on tests, preferential seating or course registration, and course materials in accessible formats. In addition to academic adjustments, Section 504's postsecondary regulations, address adaptations, accommodations, and nondiscrimination in a number of nonacademic areas, including housing, employment services, physical education and athletics, and counseling and placement services. (34 C.F.R. §§ 100.1 et seq.)	*P-12:* Extends many of Section 504's requirements for providing adaptations, accommodations, and measures to ensure accessibility in P-12 public schools to secular private schools. ADA regulations also provide requirements for alterations and new construction to make buildings and facilities, including schools, accessible to people with disabilities. (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35.151; 36 C.F.R. § 1191.1) *Postsecondary:* The ADA requires IHEs to provide reasonable accommodations to allow students with disabilities to access campus activities and services. The ADA also extends protections to students in postsecondary programs and activities no matter whether the program or activity receives federal funds. (42 U.S.C. §§ 12181 et seq.; 28 C.F.R. §§ 36.101 et seq.) *P-12 and Postsecondary*: ADA provisions on examinations and courses apply to any entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes. The ADA requires these entities to offer such examinations or courses in a place and manner accessible to people with disabilities or offer alternative accessible arrangements. ADA regulations address making buildings and facilities accessible, as well as providing accessible transportation. (42 U.S.C. § 12189; 28 C.F.R. § 36.309)

Source: Table compiled by CRS based on a review of the Individuals with Disabilities Education Act (IDEA; P.L. 108-446), the Rehabilitation Act of 1973 (P.L. 93-112), and the Americans with Disabilities Act (ADA, P.L. 101-336), as amended, along with their regulations.

a. These amendments represent the most recent comprehensive reauthorizations or substantial amendments to the IDEA, ADA, and Section 504. Laws, such as the Every Student Succeeds Act (P.L. 114-95), contain conforming amendments to the laws in this table but did not substantially amend them.

b. IDEA requires a FAPE be made available to all children with disabilities residing in each state between the ages of 3 and 21, inclusive, unless the application of IDEA provisions to children between the ages of 3 and 5 or 18 and 21would be inconsistent with state law or practice, or the order of any court, respecting the provision of public education to children in those age ranges (20 U.S.C. § 1412(a)(1)). In FY2015, 20 states provided children a free appropriate education between the ages of 3 and 21. The remaining states stopped providing FAPE to students at 18, 19, or 20 years of age.

c. For more information on the IDEA and analysis of Part B and Part C provisions, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, CRS Report R44624, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer*, and CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities*.

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