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SUMMARY

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The Rights of Students with Disabilities Under the IDEA, Section 504, and the ADA

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) each play a part in federal efforts to support the education of individuals with disabilities. These statutory frameworks, while overlapping, differ in several ways, including which students they cover and the rights and services they afford. When students with disabilities transition between levels of schooling, or between public and private schools, the accommodations and services required by federal law may change. For example, while the IDEA, Section 504, and the ADA apply to schools from preschool through 12th grade, only Section 504 and the ADA apply to institutions of higher education. Application of the IDEA, Section 504, and the ADA to students with disabilities is also determined by each law's (1) definition of "disability"; (2) mechanisms to determine whether a student has a qualifying disability; (3) required services, aids, and accommodations; (4) prohibited conduct; and (5) enforcement mechanisms and available remedies.

Individuals with Disabilities Education Act (IDEA)

The IDEA, as amended, authorizes federal grants to states to support the education of children with disabilities. As a condition of receiving IDEA funds, the act requires states to implement a range of services and procedural protections for students with disabilities. For example, state educational agencies (SEAs) and local educational agencies (LEAs) must (1) identify, locate, and evaluate all children residing in their jurisdictions who may have qualifying disabilities 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 individualized 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) implement procedural safeguards for children with disabilities and their parents, including a right to an administrative hearing to challenge eligibility determinations and educational placements, with the ability to appeal the ruling to federal court. Of the three legal frameworks discussed in this report, only the IDEA focuses squarely on education and only the IDEA funds services for children with disabilities.

Section 504 of the Rehabilitation Act of 1973 (Section 504)

Section 504 is an antidiscrimination provision in 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 (as well as in federal executive branch programs). As Section 504 is linked to federal funding, it applies to all public elementary and secondary schools, as well as some private ones, and most colleges and universities. While Section 504 summarily describes covered entities' obligations, the U.S. Department of Education's (ED) implementing regulations are more extensive. ED's implementing regulations and caselaw interpreting Section 504 require covered schools to ensure that students with disabilities are not excluded, denied services, segregated, or otherwise treated differently because of their disabilities, unless a school can demonstrate that accommodating a disabled student would fundamentally alter the nature of the school's program or cause an undue financial burden. Some overlap exists between ED's Section 504 regulations and the IDEA's requirements.

Americans with Disabilities Act of 1990 (ADA)

The ADA broadly protects individuals with disabilities from discrimination in a range of contexts—both public and private—including employment, state and local government services, transportation, telecommunications, and public accommodations. In the educational context, the ADA, like Section 504, applies to all public and many private schools, from preschool through postsecondary education. Courts usually interpret the ADA to provide the same general substantive protections as Section 504. The ADA's statutory provisions and implementing regulations are, for the most part, not education specific. They outline some types of modifications that all covered entities must make for people with disabilities, including, for example, removing certain barriers, allowing service animals, and making available accessible examinations and course materials.

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Several federal laws require schools to provide services and accommodations to students with disabilities and to protect them from discrimination. The application of these laws may change depending on students' circumstances. Times of transition—when a student moves to a new school district or state, or from preschool to kindergarten, elementary to middle school, middle to high school, or high school to postsecondary education—may result in changes to which law applies, what the law requires, and what services the student needs. Moving from the services provided in the preschool through 12th grade (P–12) public education system to those available at a college or university can be a particularly significant transition.[1]

At the P–12 level, three main federal laws protect the rights of students with disabilities: the Individuals with Disabilities Education Act (IDEA),[2] Section 504 of the Rehabilitation Act of 1973 (Section 504),[3] and the Americans with Disabilities Act (ADA).[4] For students receiving special education under the IDEA or accommodations and services under Section 504 or the ADA, transitioning from the P–12 public education system to an institution of higher education (IHE) may affect how a school assesses their disabilities, their eligibility for accommodations or services, and the services and accommodations available to them. Students may also experience different treatment in the same educational context depending on which laws apply to them. This report examines the impact of these laws on students with disabilities in certain key respects:

- how the laws define disability;
- how the laws require schools to determine eligibility for services and protections;
- how the laws ensure students with disabilities receive the accommodations and services they need;
- the scope of legal protection guaranteed to students with disabilities;
- how families enforce their rights; and
- the available remedies.

For a summary comparing the provisions examined in this report, see **Table 1**.

Glossary of Abbreviations

Abbreviation	Definition
ADA	Americans with Disabilities Act
DOJ	U.S. Department of Justice
EAHCA	Education for All Handicapped Children Act
ED	U.S. Department of Education
EHA	Education of the Handicapped Act
FAPE	Free appropriate public education
IDEA	Individuals with Disabilities Education Act

[1] *See infra* "Postsecondary Education: Identification and Evaluations" and "Postsecondary Education: Transition and Admissions."

[2] Pub. L. No. 94-142, 89 Stat. 773 (1975) (as amended by the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, tit. I, 118 Stat. 2647, 2647–99) (codified as amended at 20 U.S.C. §§ 1400–1482).

[3] Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (codified as amended at 29 U.S.C. § 794).

[4] Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213).

IEP	Individualized education program
IHE	Institution of higher education
LEA	Local educational agency
LRE	Least restrictive environment
OCR	Office for Civil Rights
OSEP	Office of Special Education Programs
P–12	Preschool through 12th grade
SEA	State educational agency
Section 504	Section 504 of the Rehabilitation Act of 1973
Title VI	Title VI of the Civil Rights Act of 1964
Title IX	Title IX of the Education Amendments of 1972

Laws Protecting Students with Disabilities

While the IDEA, Section 504, and the ADA often entitle students to similar services, the laws have different purposes and scopes of coverage. The distinctions reflect a basic difference in statutory design: the IDEA "guarantees individually tailored educational services," while the ADA and Section 504 are focused on eliminating discrimination in public life.[5]

The Individuals with Disabilities Education Act (IDEA)

Congress and the President first established a grant program to the states to facilitate the education of children with disabilities in 1966,[6] which they replaced with the Education of the Handicapped Act (EHA) in 1970.[7] In 1975, they enacted the Education for All Handicapped Children Act (EAHCA),[8] which amended the EHA. The EAHCA was the first comprehensive legislative attempt to attach specific requirements to states' receipt of federal funds for the education of children with disabilities.[9] At the time it passed the EAHCA, Congress found that more than half of all children with disabilities were not receiving "appropriate educational services" and that one million children with disabilities were "excluded entirely from the public school system."[10] Congress determined that many children participating in public school programs had undiagnosed disabilities that hindered their educational progress.[11] To address these findings, Congress laid down a clear mandate to any state seeking funds under the act: to receive those funds, the state must "identify and evaluate" all children with disabilities residing "within its borders" to ensure those children receive a "free appropriate public education" (FAPE).[12] The

[5] Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 170–71 (2017).

[6] Elementary and Secondary Education Amendments of 1966, Pub. L. No. 89-750, § 161, 80 Stat. 1191, 1204–08 (1966).

[7] Pub. L. No. 91-230, tit. VI, 84 Stat. 121, 175–88 (1970).

[8] Pub. L. No. 94-142, 89 Stat. 773 (1975).

[9] *See* Bd. of Educ. v. Rowley, 458 U.S. 176, 179–80 (1982) (recounting the legislative history of the EAHCA).

[10] Pub. L. No. 94-142, sec. 3, § 601(b), 89 Stat. at 774.

[11] *Id.*

[12] *Rowley*, 458 U.S. at 181, 200.

EAHCA was later renamed the IDEA, and it has been comprehensively reauthorized five times since its original enactment in 1975, most recently in 2004.[13]

The IDEA remains the main federal statute governing special education for children from birth through age 21.[14] It imposes requirements only on public schools, although in some circumstances it requires public school districts to provide services to children in private settings, such as hospitals or private schools.[15] The statute operates by supplementing state and local funding with federal funding to pay for some of the additional costs of educating children with disabilities.[16] State educational agencies (SEAs), i.e., the state offices that oversee public P–12 education, and local educational agencies (LEAs), i.e., public boards of education or other public entities that govern P–12 public schools, primarily implement the IDEA.[17]

Of particular significance to this report is Part B of the IDEA,[18] which protects the right of individuals with disabilities, from ages 3 through 21, to a FAPE.[19] A school provides a FAPE for each IDEA-eligible student through an individualized education program (IEP), a written plan developed by a specific group of knowledgeable individuals (the IEP team) setting forth, among other things, a functional assessment of the child, their educational goals, and the services the child will receive.[20] In this report, references to the IDEA are to IDEA Part B.

In the 2022–2023 school year, approximately 7.6 million children ages 3 through 21 received special education and related services under Part B of the IDEA.[21] Students served under Part B of the IDEA represent about 14.7% of all P–12 public school students.[22]

The IDEA is administered by the U.S. Department of Education's (ED) Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services.[23]

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[13] Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (codified as amended at 20 U.S.C. §§ 1400–1482).

[14] For more information on the IDEA, see CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities*, by Kyrie E. Dragoo (2024), and CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo (2019).

[15] Lynn M. Daggett, *"Minor Adjustments" and Other Not-So-Minor Obligations: Section 504, Private Religious K-12 Schools, and Students with Disabilities*, 52 U. LOUISVILLE L. REV. 301, 304 (2014); *see infra* "P–12 Education."

[16] A "state" within the meaning of the IDEA includes "each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas," i.e., "the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands." 20 U.S.C. § 1401(22), (31). For more information on IDEA funding, see CRS Report R44624, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer*, by Kyrie E. Dragoo (2019).

[17] 20 U.S.C. § 1401(19), (32).

[18] *Id.* §§ 1411–1419.

[19] *Id.* § 1412(a)(1).

[20] *Id.* § 1414(d).

[21] *IDEA Section 618 Data Products: Static Tables Part B Child Count & Educational Environments Table 1*, U.S. DEP'T OF EDUC., https://data.ed.gov/dataset/idea-section-618-data-products-static-tables-part-b-count-environ-table1/resources (last updated Feb. 6, 2024) (in the column to the left of the screen, download the XLSX file from 2022–2023).

[22] *Digest of Education Statistics*, *Table 204.70, Number and Percentage of Children Served Under Individuals with Disabilities Education Act (IDEA), Part B, by Age Group and State or Jurisdiction: Selected School Years, 1990-91 Through 2021-22*, NAT'L CTR. FOR EDUC. STAT. (Feb. 2023), https://nces.ed.gov/programs/digest/d22/tables/dt22_204.70.asp.

[23] U.S. DEP'T OF EDUC., OFF. FOR CIV. RIGHTS, PARENT AND EDUCATOR RESOURCE GUIDE TO SECTION 504 IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS 41 (2016) [hereinafter OCR SECTION 504 RESOURCE GUIDE], https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf.

OSEP administers the IDEA's formula and discretionary grants programs. OSEP also monitors states' implementation of the IDEA and collects data and disseminates information on children served under the IDEA, including through an annual report to Congress.[24] Unlike ED's role with regard to Section 504 and the ADA, discussed below,[25] OSEP does not investigate individual complaints of IDEA noncompliance.

Section 504 of the Rehabilitation Act of 1973

In 1973, two federal district court decisions called into question the constitutionality of policies denying children with disabilities access to public education.[26] Subsequently, Congress enacted the first of a series of civil rights statutes addressing discrimination against individuals with disabilities: the Rehabilitation Act.[27] The Rehabilitation Act of 1973 established the Rehabilitation Services Administration and funding for projects and studies supporting the employment of people with disabilities. At the time of its adoption, Section 504 was the only section concerned with the civil rights of people with disabilities. That provision broadly prohibits recipients of federal funds from discriminating against individuals with disabilities.[28] Indirect federal funding, including federal financial aid that students pass on to schools, triggers Section 504 responsibilities.[29] Section 504's nondiscrimination guarantee therefore stretches quite far, covering not just all P–12 public schools (including public charter and magnet schools)[30] but also private schools that accept federal funding and most IHEs.[31]

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[24] *See, e.g.*, U.S. DEP'T OF EDUC., OFF. OF SPECIAL EDUC. & REHABILITATIVE SERVS., 44TH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2022 (2023), https://sites.ed.gov/idea/files/44th-arc-for-idea.pdf.

[25] *See infra* "Enforcement and Remedies Under Section 504 and the ADA."

[26] *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 v. Pennsylvania, 343 F. Supp. 279, 293–97 (E.D. Pa. 1972) (concluding that claims based on the denial of education to children with disabilities were "colorable" under the Due Process and Equal Protection Clauses of the Fourteenth Amendment). The Supreme Court has held that "[p]ublic education is not a 'right' granted to individuals by the Constitution." Plyler v. Doe, 457 U.S. 202, 221 (1982) (citing San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 35 (1973)). A state's decision to deny access to education to some that it provides to others may be challenged under the Equal Protection Clause. *See generally* Plyler, 457 U.S. 202.

[27] 29 U.S.C. §§ 701–797b.

[28] *Id.* § 794(a) ("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 . . . .").

[29] *See* Grove City Coll. v. Bell, 465 U.S. 555, 564–69 (1984) (addressing meaning of "federal financial assistance" under Title IX of the Education Amendments of 1972 (Title IX)), *superseded by statute on other grounds*; Bennett-Nelson v. La. Bd. of Regents, 431 F.3d 448, 453 (5th Cir. 2005) (recognizing that *Grove City* applies to Section 504).

[30] B.H. v. Portage Pub. Sch. Bd. of Educ., No. 1:08-CV-293, 2009 WL 277051, at *6 (W.D. Mich. Feb. 2, 2009) ("Because every state receives federal money to operate its public education system, section 504 applies to public elementary and secondary education programs."); *see* Off. for Civ. Rights, *Disability Discrimination: Frequently Asked Questions*, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/disability.html (last modified May 17, 2023) [hereinafter *Disability Discrimination FAQs*].

[31] *Disability Discrimination FAQs*, *supra* note 30 ("All public colleges and universities are covered by Section 504 and Title II. Virtually all private colleges and universities are also covered by Section 504 because they receive federal financial assistance by participating in federal student aid programs."). As Section 504 coverage follows federal funding, regardless of the type of program being funded, it can also apply to vocational education programs and education programs housed in non-educational settings (such as prisons or hospitals). *See, e.g.*, Bennett v. Hurley Med. Ctr., 86 F.4th 314, 324 (6th Cir. 2023) (applying Section 504 to nursing student's claims against hospital); Powers v. MJB Acquisition Corp., 184 F.3d 1147 (10th Cir. 1999) (applying Section 504 to vocational school); Harris v. Thigpen, (continued...)

Under Section 504, covered entities must refrain from taking adverse actions on the basis of a person's disability, such as refusing students with disabilities equal access to educational programs.[32] They must also grant reasonable accommodations when necessary to afford students with disabilities "meaningful access" to educational programs.[33] Section 504 is not a grant program and does not provide funding for serving people with disabilities, although schools may have their federal funding revoked if they engage in disability discrimination.[34]

Section 504 affects a significant number of students. In the 2017–2018 school year, ED reported that nearly 1.4 million public school students received some sort of service or accommodation solely under Section 504.[35] While ED does not report the number of students receiving Section 504 services at the postsecondary level, in the 2015–2016 school year, approximately 19.5% of undergraduates and 12.0% of post-baccalaureate students reported having a disability (although the survey tool did not use Section 504's definition of disability).[36]

ED's Office for Civil Rights (OCR) has a primary role in enforcing Section 504 in the education context. ED has developed extensive Section 504 regulations, some of which apply generally and some specific to different levels of education or public versus private schools.[37] As discussed further below, these regulations reflect the influence of the IDEA and give significant detail to Section 504's short, general statutory language prohibiting disability discrimination. Where this report discusses Section 504 requirements, those requirements are often found in ED's regulations rather than in the text of the act itself.

941 F.2d 1495, 1522 & n.14 (11th Cir. 1991) (holding that Section 504 applies to prisoner claims related to access to educational programming).

[32] *See infra* "Disparate Treatment."

[33] *See* Alexander v. Choate, 469 U.S. 287, 301 (1985); *infra* "Reasonable Accommodations, Modifications, and Auxiliary Aids and Services."

[34] 29 U.S.C. § 794a(a)(2) (cross-referencing the remedies available under Title VI of the Civil Rights Act of 1964 (Title VI), which includes procedures for revoking federal funding from entities engaging in racial discrimination, 42 U.S.C. § 2000d-1).

[35] Civ. Rights Data Collection, Off. for Civ. Rights, *2017–18 State and National Tables*, U.S. DEP'T OF EDUC., https://civilrightsdata.ed.gov/estimations/2017-2018 (last updated Mar. 11, 2024) (click on "Tables for Enrollment," then click "Section 504 Enrollment" to access table entitled, "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 2017–18").

[36] U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., 2015–16 NATIONAL POSTSECONDARY STUDENT AID STUDY: STUDENT FINANCIAL AID ESTIMATES FOR 2015–16 (NPSAS:16), at 18 (2018), https://nces.ed.gov/pubs2018/2018466.pdf; *see also* DATALAB, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/datalab/index.aspx. Estimate obtained by CRS through the National Center for Education Statistics DATALAB 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, attention deficit disorder, attention deficit hyperactivity disorder, depression, or a serious learning disability).

[37] 34 C.F.R. §§ 104.1–104.23 (2023) (general regulations); *id.* §§ 104.31–104.38 (covering public preschool, elementary, and secondary education); *id.* § 104.39 (covering private preschool, elementary, and secondary education); *id.* §§ 104.41–104.47 (covering postsecondary education).

The Americans with Disabilities Act of 1990 (ADA)

The ADA[38] has been described as "the most sweeping anti-discrimination measure since the Civil Rights Act of 1964."[39] Its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[40] "To effectuate its sweeping purpose, the ADA forbids discrimination against individuals with disabilities in major areas of public life."[41] Most relevant to the education context, Title II of the ADA prohibits any "public entity," including public schools and universities, from discriminating on the basis of disability.[42] Title III forbids disability discrimination by "public accommodations,"[43] a category that includes private schools and universities[44] but exempts religious organizations.[45] As many private primary and secondary schools are religious,[46] the ADA often does not apply to P–12 private school students.

Congress modeled Title II after Section 504.[47] Courts usually interpret the substantive requirements of Title II and Title III similarly[48] and the requirements of Section 504 and the ADA similarly.[49] Like Section 504, the ADA is not a grant program and does not fund services for people with disabilities.

ED's OCR shares enforcement authority with the Department of Justice (DOJ) over Title II of the ADA in the public education context.[50] Only DOJ enforces Title III.[51]

[38] 42 U.S.C. §§ 12101–12213.

[39] Opinion, *A Law for Every American*, N.Y. TIMES (July 27, 1990), https://www.nytimes.com/1990/07/27/opinion/a-law-for-every-american.html.

[40] 42 U.S.C. § 12101(b)(1).

[41] PGA Tour, Inc. v. Martin, 532 U.S. 661, 675 (2001).

[42] 42 U.S.C. §§ 12131–12132; Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 159 (2017).

[43] 42 U.S.C. § 12182.

[44] *Id.* § 12181(7)(J) (listing among covered "public accommodation[s]" a "nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education"). As it applies to a "place of education," *id.*, the ADA also generally applies to vocational education programs and education programs housed in non-educational settings.

[45] *Id.* § 12187 (exempting "religious organizations or entities controlled by religious organizations, including places of worship"); *see, e.g.*, Marshall v. Sisters of Holy Family of Nazareth, 399 F. Supp. 2d 597, 605–06 (E.D. Pa. 2005) (holding that the ADA does not apply to a Catholic school).

[46] *Private School Universe Survey: Table 2. Number and Percentage Distribution of Private Schools, Students, and Full-Time Equivalent (FTE) Teachers, by Religious or Nonsectarian Orientation of School: United States, 2019–20*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/surveys/pss/tables/TABLE02fl1920.asp (last visited Mar. 7, 2024).

[47] *E.g.*, Parker v. Universidad de Puerto Rico, 225 F.3d 1, 4 (1st Cir. 2000); Zukle v. Regents of Univ. of Cal., 166 F.3d 1041, 1045 (9th Cir. 1999).

[48] *E.g.*, K.N. v. Gloucester City Bd. of Educ., 379 F. Supp. 3d 334, 353 n.17 (D.N.J. 2019).

[49] 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, e.g.*, Durand v. Fairview Health Servs., 902 F.3d 836, 841 (8th Cir. 2018); Lacy v. Cook Cnty., 897 F.3d 847, 852 n.1 (7th Cir. 2018) (stating that "because Title II was modeled after section 504, the elements of claims under the two provisions are nearly identical" (citation omitted)); Jakubowski v. Christ Hosp., Inc., 627 F.3d 195, 201 (6th Cir. 2010).

[50] 28 C.F.R. § 35.190(b)(2) (2023); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 40.

[51] 28 C.F.R. § 36.502. For more information on the ADA, see CRS In Focus IF12227, *The Americans with Disabilities Act: A Brief Overview*, by Abigail A. Graber (2022).

Laws Protecting Students with Disabilities: Key Takeaways

- The IDEA is a grant program that funds services for students with disabilities and entitles them to a FAPE.
- Section 504 and the ADA are general nondiscrimination laws protecting people from disability-based discrimination and requiring reasonable accommodations. Section 504 and the ADA are usually interpreted congruently.
- The IDEA applies to all public P–12 schools. Section 504 applies to all schools that take federal funding (including federal student aid), which includes all public schools (P–12 and postsecondary) and many private schools (including most private postsecondary schools). The ADA applies to all public schools (Title II) and all nonparochial private schools (P–12 and postsecondary) (Title III).

Defining "Disability"

The IDEA's Categorical, Education-Centered Definition of "Disability"

The IDEA's definition of disability has two components. First, the IDEA definition of disability is categorical. It identifies a covered "child with a disability" as any "child"[52] having at least one condition falling into one or more of 13 enumerated categories.[53] ED's implementing regulations broadly define each IDEA disability category.[54] States have adopted their own clarifying definitions, although these definitions cannot exclude children otherwise eligible for services under the IDEA.[55] One category that encompasses a particularly diverse array of conditions is "other health impairments,"[56] which the statute does not define. ED defines this term in its

[52] Even though the IDEA refers to all covered individuals as "children," the act applies to 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 at times refers to covered individuals as "children."

[53] E.M. *ex rel.* E.M. v. Pajaro Valley Unified Sch. Dist. Off. of Admin. Hearings, 758 F.3d 1162, 1175 (9th Cir. 2014) ("A 'child with a disability' may seek to qualify for special education benefits under more than one of the categories listed in 20 U.S.C. § 1401(3)(A)(i)."); Pohorecki v. Anthony Wayne Loc. Sch. Dist., 637 F. Supp. 2d 547, 557 (N.D. Ohio 2009) ("Only children with certain qualifying disabilities are eligible for IDEA's benefits."). The statute lists 10 categories of covered disabilities. 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"). The implementing regulations break the category of "hearing impairments" into three separate categories (deafness, deaf-blindness, and hearing impairment) and add a category for "multiple disabilities," bringing the total number to 13. 34 C.F.R. § 300.8(c)(1)–(13) (2023). At their discretion, state and local educational agencies may also define "child with a disability" to include children ages 3 through 9 experiencing certain developmental delays. 20 U.S.C. § 1401(3)(B).

[54] *See* 34 C.F.R. § 300.8(c)(1)–(13).

[55] *See* U.S. Dep't of Educ., Off. of Spec. Educ. & Rehab. Serv., Opinion Letter on Eligibility Document Requirements Under IDEA Part B 1 (Jan. 7, 2002), https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2002-1/redact010702eligibility.pdf (acknowledging that states may adopt their own definitions of IDEA terms but may not "implement" those definitions to exclude eligible children). Policy letters are not legally binding. 20 U.S.C. § 1406(e). At least one commentator argues that states should not have the power to define terms in federal law and claims that states have adopted certain definitions of disability that are more restrictive than the IDEA allows. Mark C. Weber, *The IDEA Eligibility Mess*, 57 BUFF. L. REV. 83, 117 (2009). *But see* Robert A. Garda, Jr., *Who Is Eligible Under the Individuals with Disabilities Education Improvement Act?*, 35 J.L. & EDUC. 291, 299–301 (2006) (supporting reference to state standards to determine meaning of certain undefined terms in the IDEA).

[56] 20 U.S.C. § 1401(3)(A).

regulations[57] and lists a number of disorders that may qualify under it.[58] States take different approaches to implementing this disability category. Delaware, for instance, outlines detailed criteria for determining whether children with attention deficit hyperactivity disorder have an "other health impairment."[59] Other states impose no criteria beyond those found in ED's IDEA regulations.[60]

The regulatory definition of each disability category (except for specific learning disabilities, which includes, e.g., dyslexia) includes the requirement that the disability "adversely affects a child's educational performance."[61] Disabilities that do not interfere with a student's education do not qualify the student for IDEA services. The IDEA does not set a clear threshold for how significantly a student's disability must interfere with his or her education. Several states have elaborated on the adverse effect requirement.[62]

Additionally, to be eligible under the IDEA, a student must "need[] special education and related services" because of his or her disability.[63] When regular classroom instruction or interventions other than special education can adequately overcome the adverse effects of a child's disability, courts may find the child ineligible for IDEA services.[64] There is no definition of when a student

[57] 34 C.F.R. § 300.8(c)(9) (defining an "other health impairment" 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 . . . is due to chronic or acute health problems . . . and adversely affects a child's educational performance").

[58] *Id.* (listing as examples such conditions "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").

[59] 14 DEL. ADMIN. CODE §§ 925.6.14.1–925.6.14.5 (2024).

[60] *See, e.g.*, 8 VA. ADMIN. CODE § 20-81-80(S) (2010) (providing that "a child has an other health impairment" if the alleged impairment satisfies ED's definition and "there is an adverse effect on the child's educational performance due to one or more documented characteristics of the other health impairment").

[61] 34 C.F.R. § 300.8(c). One commentator states that the adverse effect requirement is "implied" for specific learning disabilities. Weber, *supra* note 55, at 103.

[62] *See, e.g.*, 707 Ky. Admin. Regs. § 1:002(2) (Mar. 2023); 05-071-101; ME. CODE R. § II(3) (LexisNexis 2023); 22-006 VT. CODE R. § 2362(d) (2024); *see also* J.D. *ex rel.* J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 66 (2d Cir. 2000) ("Neither the IDEA nor the federal regulations define the terms 'need special education' or 'adverse effect on educational performance,' leaving it to each State to give substance to these terms.").

[63] 20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a)(1); *see, e.g.*, Miller v. Charlotte-Mecklenburg Schs. Bd. of Educ., No. 320CV00493MOCDCK, 2021 WL 3561226, at *3 (W.D.N.C. Aug. 11, 2021) ("Under the IDEA, the phrase 'child with a disability' is a misnomer because the IDEA defines a 'child with a disability' as a child who has been diagnosed with a qualifying disability *and* requires special education and related services as a result of the disability. Thus, the diagnosed disability by itself is not sufficient for a child to be a 'child with a disability' under the IDEA." (citations omitted)).

[64] *See, e.g.*, L.J. by & through Hudson v. Pittsburg Unified Sch. Dist., 850 F.3d 996, 1003–06 (9th Cir. 2017); Alvin Indep. Sch. Dist. v. A.D. *ex rel.* Patricia F., 503 F.3d 378, 384 (5th Cir. 2007); T.W. by K.J. v. Leander Indep. Sch. Dist., No. AU-17-CA-00627-SS, 2019 WL 1102380, at *5 (W.D. Tex. Mar. 7, 2019); Molly L. v. Lower Merion Sch. Dist., 194 F. Supp. 2d 422, 427 n.3 (E.D. Pa. 2002). One commentator criticizes courts for "presuming that a disability that adversely affects educational performance requires remediation through special education," when many such disabilities require accommodations other than "special education." Robert A. Garda, Jr., *Untangling Eligibility Requirements Under the Individuals with Disabilities Education Act*, 69 MO. L. REV. 441, 489 (2004); *see, e.g.*, McIntyre v. Eugene Sch. Dist. 4J, 976 F.3d 902, 914 (9th Cir. 2020) (distinguishing between special education, which must be "specially designed *instruction*," and other accommodations, such as "provid[ing] an alternative, quiet location to take exams," and "provid[ing] extra time to complete exams" (quoting 20 U.S.C. § 1401(29)). Another commentator observes that general education and special education "increasingly overlap[]," contributing to the development of "unprincipled and unpredictable" IDEA eligibility standards in litigation. Perry A. Zirkel, *Through a Glass Darkly: Eligibility Under the IDEA—The Blurry Boundary of the Special Education Need Prong*, 49 J.L. & EDUC. 149, 166–67 (2020).

"needs" services.[65] School districts must make that determination by "draw[ing] upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior."[66] Some decisionmakers appear less likely to find eligibility when children already perform well in school, while others focus more on whether a child could benefit from special education regardless of his or her current academic performance.[67]

Only if students meet both the categorical and educational criteria will they be eligible to receive special education services.

Section 504 and the ADA's Cross-Contextual Definition of "Disability"

Section 504 and the ADA draw on a common definition of "disability."[68] 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."[69] In some ways, this definition is broader than the definition of disability under the IDEA.[70] As the ADA and Section 504 are designed to prohibit discrimination and improve accessibility in society generally, their definition of disability, unlike the IDEA's, is not restricted to conditions that impact educational progress.[71] An "impairment" that affects any "major life activity" can qualify, and major life activities are broadly defined.[72] For example, basic activities like seeing, hearing, walking, bending, communicating, and thinking; and the function of body systems, such as the immune system, endocrine system, or neurological function, are "major life activities."[73] The conditions covered by Section 504 and the ADA are also not confined to those fitting within particular categories as they are under the IDEA.

The ADA and Section 504 protect people from discrimination when they have a history of disability or are assumed to be disabled, even when they have no present impairment.[74] Thus, for

[65] B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 159 & n.8 (2d Cir. 2016) (comparing the IDEA to the ADA and Section 504, which require a disability to be "substantially limiting"); Weber, *supra* note 55, at 120; Garda, *Untangling Eligibility Requirements*, *supra* note 64, at 491–92.

[66] 34 C.F.R. § 300.306(c)(1)(i); *see Alvin*, 503 F.3d at 383.

[67] *See* Zirkel, *supra* note 64, at 165–66; Garda, *Untangling Eligibility Requirements*, *supra* note 64, at 493–507. Under ED's regulations, a student may be IDEA-eligible even if he or she "has not failed or been retained in a course or grade, and is advancing from grade to grade." 34 C.F.R. § 300.101(c)(1).

[68] 42 U.S.C. § 12102 (ADA definition of disability); 29 U.S.C. § 705(9)(B), (20)(B) (incorporating the ADA's definition in Section 504).

[69] 42 U.S.C. § 12102(1).

[70] *See* CTL *ex rel.* Trebatoski v. Ashland Sch. Dist., 743 F.3d 524, 529 (7th Cir. 2014).

[71] *See, e.g.*, M.D. v. Colonial Sch. Dist., 539 F. Supp. 3d 380, 396 (E.D. Pa. 2021) (observing that Section 504's "protections are broader than those under the IDEA with the intent of rooting out disability-based discrimination against people of all ages, not just students"); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 5 ("School staff should note, in particular, that a student may have a disability and be eligible for Section 504 services even if his or her disability does not limit the major life activity of learning."); Garda, *Untangling Eligibility Requirements*, *supra* note 64, at 487 ("Section 504's coverage is broader than IDEA's because it does not consider the child's need for special education.").

[72] 42 U.S.C. § 12102(2).

[73] *Id.*

[74] 42 U.S.C. § 12102(1)(B); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 7–8. Covered entities need not offer (continued...)

example, the ADA and Section 504 may require a school to accommodate a child's absences to attend medical appointments following up on a disabling condition that is cured or in remission.[75] A school can also violate the ADA and Section 504 by discriminating against a student on the basis of a perceived disability.[76] For example, a school might offer a student inferior academic opportunities because it erroneously perceived the student to have an intellectual disability.[77] The IDEA does not cover students who do not, in fact, have any present disability.[78]

Many courts assume that Section 504 and the ADA cover any child who is eligible for IDEA services.[79] On the other hand, some courts view the ADA and Section 504 as narrower than the IDEA in at least one respect: the requirement that a disability be "substantially limiting."[80] Congress clarified through the ADA Amendments Act that courts hearing Section 504 and ADA claims should construe "disability" as broadly as possible and that it did not intend for the "substantially limiting" requirement to significantly raise the bar.[81] Nevertheless, some courts continue to emphasize that individuals may qualify for coverage under the IDEA without qualifying under the ADA and Section 504, because IDEA-eligible students need not have a "'substantially limiting' impairment."[82]

Even the courts that interpret the ADA and Section 504 to define disability more narrowly than the IDEA does tend to expect that most students who qualify for services under the IDEA will

reasonable modifications to people who are only "regarded as" disabled, when they do not, in fact, have a disability. 28 C.F.R. § 35.130(b)(7)(ii) (2023) (ADA Title II regulation); 28 C.F.R. § 36.302(g) (ADA Title III regulation).

[75] 28 C.F.R. pt. 35 app. C §§ 35.108(e), 36.105(e).

[76] 42 U.S.C. § 12102(1)(C).

[77] *See* Ga. State Conf. of Branches of NAACP v. Georgia, 775 F.2d 1403, 1427 (11th Cir. 1985) (acknowledging that Section 504 allows students to bring claims that they have been misclassified as intellectually disabled).

[78] *See* Muller v. Comm. on Special Educ. of E. Islip Union Free Sch. Dist., 145 F.3d 95, 100 n.2 (2d Cir. 1998); *Ga. State Conf. of Branches of NAACP*, 775 F.2d at 1427 n.39.

[79] *E.g.*, Doucette v. Georgetown Pub. Sch., 936 F.3d 16, 25 n.12 (1st Cir. 2019); D.L. *ex rel.* K.L. v. Balt. Bd. of Sch. Comm'rs, 706 F.3d 256, 260 (4th Cir. 2013); Kimble v. Douglas Cnty. Sch. Dist. RE-1, 925 F. Supp. 2d 1176, 1181 (D. Colo. 2013); K.M. *ex rel.* D.G. v. Hyde Park Cent. Sch. Dist., 381 F. Supp. 2d 343, 358 (S.D.N.Y. 2005). ED also appears to take this position. OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 9, 42.

[80] 42 U.S.C. § 12102(1)(A).

[81] *Id.* § 12102(4)(A); *see id.* § 12102(4)(B) ("The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008."). The findings and purposes of the ADA Amendments Act of 2008 expressed Congress's view that the Supreme Court had adopted too narrow an interpretation of "substantially limits" and "narrowed the broad scope of protection intended to be afforded by the ADA." ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(a)(5), (7), 122 Stat. 3553. Under the current DOJ ADA regulations, "[a]n impairment is a disability . . . if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting." 28 C.F.R. § 35.108(d)(1)(v) (ADA Title II regulation); *accord* 28 C.F.R. § 36.105(d)(1)(v) (ADA Title III regulation).

[82] Ellenberg v. N.M. Mil. Inst., 572 F.3d 815, 821 (10th Cir. 2009) (alterations omitted); *accord* B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 159 (2d Cir. 2016); Mann v. La. High Sch. Athletic Ass'n, 535 F. App'x 405, 411 (5th Cir. 2013); A.W. *ex rel.* H.W. v. Middletown Area Sch. Dist., No. 1:13-CV-2379, 2015 WL 390864, at *15 (M.D. Pa. Jan. 28, 2015). In practice, many decisionmakers appear to interpret the IDEA to require impairments to substantially limit students' learning: "There is general agreement among decision-makers that failing children need special education and children performing average to above average do not . . . . Many courts and hearing officers . . . require a child to fail in regular education before a need for special education exists." Garda, *Untangling Eligibility Requirements*, *supra* note 64, at 504. *But see, e.g.*, Corchado v. Bd. of Educ. Rochester City Sch. Dist., 86 F. Supp. 2d 168, 176 (W.D.N.Y. 2000) (holding that a child with an average school performance can still be eligible for IDEA services); *supra* note 67 and accompanying text.

also be covered by the ADA and Section 504.[83] The reverse is not always true: children who are protected under the ADA and Section 504 may not qualify for IDEA services.[84]

Defining Disability: Key Takeaways

- The IDEA applies to students who fall within at least one of 13 disability categories *and* who need special education services as a result of their disabilities.
- Section 504 and the ADA apply to students with a physical or mental impairment that substantially limits a major life activity, regardless of whether the disability affects educational progress.
- Section 504 and the ADA protect students with a history of disability or who are perceived to be disabled. The IDEA does not protect students with no disability.
- Students protected by the IDEA are likely to be covered by Section 504 and the ADA. The reverse is less likely to be true.

The Rights of Students with Disabilities

States that accept IDEA funding—which is all of them—must make FAPE available to all eligible children with disabilities throughout their preschool, elementary, and secondary schooling.[85] Children in private schools do not have all of the same IDEA rights as children in public schools, although they are still eligible for some IDEA services and protections.[86] The IDEA does not extend to students with disabilities in college or other postsecondary education and training programs.[87]

Section 504 applies to any educational program that receives federal funding, and the ADA applies to all public and nonparochial private schools.[88] As under the IDEA, some of Section 504 and the ADA's rules are different for public versus private schools.[89] Section 504 and the ADA do protect students in many, if not most, higher education programs.[90]

The following sections of this report identify key provisions regarding how educators determine eligibility for services under the IDEA, Section 504, and the ADA, and what services and rights each law guarantees in different educational environments.

[83] *B.C.*, 837 F.3d at 159; *Mann*, 535 F. App'x at 411; *Ellenberg*, 572 F.3d at 821, 823.

[84] *See* Doucette v. Georgetown Pub. Sch., 936 F.3d 16, 25 n.12 (1st Cir. 2019); Est. of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 991 (5th Cir. 2014). Among the most common disabilities experienced by students receiving services exclusively under Section 504 are attention deficit hyperactivity disorder, diabetes, asthma, and dyslexia. Rachel A. Holler & Perry A. Zirkel, *Section 504 and Public Schools: A National Survey Concerning 'Section 504-Only' Students*, 92 NASSP BULL. 19, 28 (Mar. 2008).

[85] *See* 20 U.S.C. § 1412(a)(1).

[86] *See infra* "FAPE in Private Schools."

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

[88] *See supra* "Section 504 of the Rehabilitation Act of 1973."

[89] *See infra* "Identification" and "FAPE in Private Schools."

[90] *See supra* "Section 504 of the Rehabilitation Act of 1973" and note 31.

Identification and Evaluation of Children with Disabilities

Preschool, Elementary, and Secondary Education

Identification

Each state receiving IDEA funds must implement policies and procedures to identify, locate, and evaluate all children residing in the state who may have a qualifying disability.[91] ED's regulations require LEAs to identify and evaluate children attending private schools within their jurisdictions even if those children live outside the state.[92] These policies and procedures—known as "Child Find"[93]—cover all children ages 3 through 21 until they graduate high school, including, for example, children who are homeless, wards of the state, or highly mobile (such as migrant children).[94] The IDEA's Child Find obligations apply to children attending both public and private schools, including parochial schools.[95] As a practical matter, LEAs have the most direct role in the administration of the IDEA at the school level and generally ensure states' (and their own) Child Find duties are met.[96] An LEA's duty to provide an IDEA evaluation is triggered when school officials have reason to suspect that a child has a disability requiring special education services.[97]

The regulations implementing Section 504 in public elementary and secondary schools impose similar duties. They require covered school districts "to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education."[98] Courts generally interpret this provision to impose on schools an "affirmative duty to identify, locate, and evaluate all children with disabilities in order to ensure that they receive a FAPE."[99] As under the IDEA, a school should initiate a Section 504 evaluation when it has reason to believe a child may be eligible for Section 504 services.[100]

The Section 504 regulations do not require private elementary and secondary schools to proactively identify and evaluate students with disabilities,[101] nor does the ADA contain such a requirement for any covered entity, private or public. Outside of cases applying Section 504 to P–12 public schools, courts ordinarily require a person with a disability (or a child's parent) to make

[91] 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111 (2023); *see, e.g.*, J.M. v. Summit City Bd. of Educ., 39 F.4th 126, 137–38 (3d Cir. 2022) (describing school districts' identification and evaluation responsibilities).

[92] 34 C.F.R. § 300.131(f).

[93] 20 U.S.C. § 1412(a)(3).

[94] *Id.* § 1412(a)(1)(A), (a)(3)(A); 34 C.F.R. § 300.111.

[95] 20 U.S.C. § 1412(a)(10)(ii); 34 C.F.R. § 300.131.

[96] *See* 20 U.S.C. § 1414(b) (instructing LEAs on how to evaluate students for IDEA eligibility).

[97] *E.g.*, D.T. by & through Yasiris T. v. Cherry Creek Sch. Dist. No. 5, 55 F.4th 1268, 1274 (10th Cir. 2022); Leigh Ann H. v. Riesel Indep. Sch. Dist., 18 F.4th 788, 796 n.6 (5th Cir. 2021); *see, e.g.*, Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1119–20 (9th Cir. 2016) ("The IDEA requires that, if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act.").

[98] 34 C.F.R. § 104.32(a).

[99] Kimble v. Douglas Cnty. Sch. Dist. RE-1, 925 F. Supp. 2d 1176, 1181 (D. Colo. 2013); *see, e.g.*, Culley v. Cumberland Valley Sch. Dist., 758 F. App'x 301, 305–06 (3d Cir. 2018); B.H. v. Portage Pub. Sch. Bd. of Educ., No. 1:08-CV-293, 2009 WL 277051, at *6 (W.D. Mich. Feb. 2, 2009).

[100] W.B. v. Matula, 67 F.3d 484, 500–01 (3d Cir. 1995), *abrogated on other grounds by* A.W. v. Jersey City Pub. Sch., 486 F.3d 791 (3d Cir. 2007); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 12, 18.

[101] *See* 34 C.F.R. § 104.35(a) (limiting the Child Find requirement to "a recipient that operates a public elementary or secondary education program or activity"); *id.* § 104.39 (Section 504 regulation governing private schools).

a request for an accommodation to trigger a covered entity's Section 504 or ADA obligations.[102] However, under both the ADA and Section 504, all covered entities must provide accommodations when a person's need for an accommodation is "obvious," even absent a request.[103] Accommodations are discussed in further detail below.

Evaluations

An LEA must evaluate a child it suspects has a disability before providing special education and related services under the IDEA or Section 504.[104] The IDEA and Section 504 evaluation requirements are similar, but not identical. ED indicates that schools may comply with Section 504 by following the IDEA's evaluation protocols.[105] The ADA does not require schools to conduct disability evaluations.

Under the IDEA, either a child's parent or an LEA, SEA, or other state agency may request an initial evaluation.[106] In general, the LEA must first obtain informed consent from a child's parent.[107] (Parental consent to an evaluation does not imply consent to special education and related services—parents must consent separately to services.)[108] Schools must seek parental consent "within a reasonable time" after their Child Find obligations are triggered, i.e., after the school has reason to believe the child has a disability.[109] The initial evaluation must take place within 60 days of parental consent or within an alternative time frame established by the state.[110] In addition, at the time of the referral or parental request for evaluation, the LEA must provide the parent with a "Procedural Safeguards Notice," which is a comprehensive written explanation of the IDEA's legal rights and protections for children with disabilities and their parents.[111]

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[102] *E.g.*, J.V. v. Albuquerque Pub. Sch., 813 F.3d 1289, 1299 (10th Cir. 2016); Halpern v. Wake Forest Univ. Health Scis., 669 F.3d 454, 465 (4th Cir. 2012); Forbes v. St. Thomas Univ., Inc., 768 F. Supp. 2d 1222, 1231 (S.D. Fla. 2010); *see* P.P. v. Compton Unified Sch. Dist., 135 F. Supp. 3d 1098, 1115 (C.D. Cal. 2015) (collecting cases requiring notice but observing that "the Ninth Circuit has yet to mandate this notice requirement in the context of ADA lawsuits against education institutions").

[103] *E.g.*, *J.V.*, 813 F.3d at 1299; Doe v. Tex. A&M Univ., No. CV H-21-3728, 2022 WL 5250294, at *10 (S.D. Tex. Oct. 6, 2022).

[104] 20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. §§ 104.35(a), 300.301(a).

[105] Off. for Civ. Rights, *Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities* Qs.18–19, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/offices/list/ocr/504faq.html (last modified July 18, 2023) [hereinafter *Frequently Asked Questions About Section 504*].

[106] 20 U.S.C. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b). The IDEA defines a *parent* to include a legal guardian (other than the state) and "an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare." 20 U.S.C. § 1401(23). Where this report refers to "parents," it adopts the IDEA's definition. The LEA may refuse the parent's request for an initial evaluation if it does not suspect that the child has a disability. 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.

[107] 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.

[108] 20 U.S.C. § 1414(a)(1)(D)(i)(II), (ii)(II).

[109] Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W., 961 F.3d 781, 791 (5th Cir. 2020); *accord* D.T. by & through Yasiris T. v. Cherry Creek Sch. Dist. No. 5, 55 F.4th 1268, 1274 (10th Cir. 2022); J.M. v. Summit City Bd. of Educ., 39 F.4th 126, 137 (3d Cir. 2022).

[110] 20 U.S.C. § 1414(a)(1)(C)(i)(I).

[111] *See* 20 U.S.C. § 1415(d).

ED's Section 504 regulations also require public schools to undertake an evaluation before determining a child with a disability's placement in regular or special education, although schools may be able to provide other kinds of accommodations prior to an evaluation.[112] Private schools receiving federal funds that choose to provide special education services must also follow Section 504's evaluation procedures.[113] Neither Section 504 nor the implementing regulations explicitly call for parental consent to an evaluation or for an evaluation to take place within a specific period of time. ED's OCR nevertheless interprets Section 504 to require LEAs to obtain parental consent to an initial evaluation.[114] A school district can violate Section 504 by unreasonably delaying an evaluation and accommodations.[115]

Under both Section 504 and the IDEA, a parent's refusal to consent to an evaluation may not be the final word. An LEA may initiate a due process hearing to seek permission to evaluate a child in the face of parental opposition, unless state law provides otherwise.[116]

In conducting an initial evaluation under the IDEA or Section 504, LEAs must use valid and reliable assessment tools tailored to assess a child's "specific areas of educational need."[117] The IDEA emphasizes that schools should assess a child "in all areas of suspected disability."[118] Both laws emphasize the importance of considering a variety of assessments and sources of information.[119] Schools must ensure that their evaluations validly measure a child's abilities and needs and that the evaluations are culturally sensitive.[120] Both Section 504 and the IDEA require

[112] 34 C.F.R. § 104.35(a); *see Spring Branch*, 961 F.3d at 794 ("Though compliance with § 504 does not absolve a school district of its duty to comply with the IDEA, we do recognize that there may be cases where intermediate measures are reasonably implemented before resorting to evaluation."); Zamora v. Hays Consol. Indep. Sch. Dist., No. 1:19-CV-1087-SH, 2021 WL 2531011, at *10 (W.D. Tex. June 20, 2021) (recognizing that schools may "pursue[] § 504 accommodations before pursuing a special education evaluation"); *Frequently Asked Questions About Section 504*, *supra* note 105, at Q.30 (indicating that "school districts may always use regular education intervention strategies to assist students with difficulties in school" but that schools must refer students for an evaluation for special education or "modification to regular education"). Distinguishing between special education and other kinds of accommodations may be difficult. *See supra* note 64.

[113] 34 C.F.R. § 104.39(c).

[114] *Frequently Asked Questions About Section 504*, *supra* note 105, at Qs.26, 42.

[115] *See* B.M. *ex rel.* Miller v. S. Callaway R-II Sch. Dist., 732 F.3d 882, 888 (8th Cir. 2013); S.L.-M. *ex rel.* Liedtke v. Dieringer Sch. Dist. No. 343, 614 F. Supp. 2d 1152, 1161 (W.D. Wash. 2008); *cf., e.g.*, Keith-Foust v. N.C. Cent. Univ., No. 1:15CV470, 2016 WL 4256952, at *10 (M.D.N.C. Aug. 11, 2016) (delaying accommodations can violate Section 504 in the university context); Guckenberger v. Bos. Univ., 974 F. Supp. 106, 115, 153–54 (D. Mass. 1997) (same). Under Section 504, "OCR generally looks to the IDEA timeline, or if applicable, to State requirements or local district policy to assess the reasonableness of the time it takes the school to evaluate the student once parental consent has been obtained." OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 17.

[116] *Frequently Asked Questions About Section 504*, *supra* note 105, at Q.26; *see* 34 C.F.R. § 300.300(a)(3)(i) (allowing 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" absent parental consent). Schools may not seek to override parental refusals to conduct an evaluation when the parents refuse IDEA services and seek to privately educate their children at the parents' expense. 34 C.F.R. § 300.300(d)(4); Fitzgerald v. Camdenton R-III Sch. Dist., 439 F.3d 773, 776–77 (8th Cir. 2006); Durkee v. Livonia Cent. Sch. Dist., 487 F. Supp. 2d 313, 317 (W.D.N.Y. 2007).

[117] 34 C.F.R. § 300.304(c)(2); *accord id.* § 104.35(b)(2); *see generally* 20 U.S.C. § 1414(b)–(c) (evaluation requirements under the IDEA); 34 C.F.R. § 104.35(b)–(c) (evaluation requirements under Section 504).

[118] 20 U.S.C. § 1414(b)(3)(B).

[119] *Id.* § 1414(b)(2)(A); *see id.* § 1414(c) (requiring school officials conducting an initial IDEA evaluation to also "review existing evaluation data on the child" from multiple sources "if appropriate"); 34 C.F.R. § 104.35(c)(1)–(2).

[120] 20 U.S.C. § 1414(b)(3)(A)(i)–(v) (IDEA); 34 C.F.R. § 104.35(b)(1), (c) (Section 504).

school officials to administer evaluations in a way that measures what the tests purport to measure, not a student's disability (e.g., the student's impaired sight, hearing, or speech).[121]

After completing an evaluation under the IDEA, the LEA should consult qualified professionals and the child's parents to determine whether the child is a "child with a disability" under the act and, if so, what his or her educational needs are.[122] Section 504, by contrast, does not expressly require that a child's parents participate in decisions about placement and services, although OCR "urges schools" to involve parents in such decisions.[123] Section 504 instead provides 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."[124] ED does mandate that LEAs give notice to parents and an opportunity for them to contest their child's Section 504 eligibility determination and services plan.[125]

Reevaluations

Under the IDEA, an LEA must conduct a reevaluation if a child's teacher or parent makes a request or if the LEA determines that a child warrants reevaluation.[126] For example, a reevaluation might be warranted if a child's performance in school significantly improves, suggesting that he or she no longer requires special education and related services, or if a child is not making appropriate progress, suggesting that he or she needs different services. Reevaluations may take place no more than once per year and no less than once every three years unless the parents and LEA agree otherwise.[127] In general, parents must consent to reevaluations.[128] Before any such reevaluation, an LEA may not change a child's eligibility for IDEA services, unless the child graduates from high school with a regular diploma or ages out of IDEA coverage.[129]

The briefer Section 504 regulations require LEAs to establish procedures consistent with their evaluation procedures for "periodic" reevaluations of students receiving Section 504 services.[130] Reevaluation procedures consistent with the IDEA satisfy this obligation.[131]

Postsecondary Education: Identification and Evaluations

The IDEA does not apply after high school,[132] and neither Section 504 nor the ADA require postsecondary institutions to affirmatively identify or evaluate students with disabilities.[133] As

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[121] 34 C.F.R. § 104.35(b)(3) (Section 504); *accord id.* § 300.304(c)(3) (IDEA).

[122] 20 U.S.C. § 1414(b)(4)(A).

[123] OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 19.

[124] 34 C.F.R. § 104.35(c).

[125] *Id.* § 104.36.

[126] 20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a).

[127] 20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b).

[128] 20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c).

[129] 20 U.S.C. § 1414(c)(5); 34 C.F.R. § 300.305(e).

[130] 34 C.F.R. § 104.35(d).

[131] *Id.*

[132] *See* 20 U.S.C. § 1414(c)(5)(B)(i) (indicating that graduation from high school terminates a child's IDEA eligibility).

[133] Pierre v. Univ. of Dayton, 143 F. Supp. 3d 703, 709 (S.D. Ohio 2015); *see* Shaikh v. Lincoln Mem'l Univ., 608 F. App'x 349, 353 (6th Cir. 2015); OFF. OF SPEC. EDUC. & REHABILITATIVE SERVS., U.S. DEP'T OF EDUC., A TRANSITION GUIDE TO POSTSECONDARY EDUCATION AND EMPLOYMENT FOR STUDENTS AND YOUTH WITH DISABILITIES 25 (2020) [hereinafter TRANSITION GUIDE], https://sites.ed.gov/idea/files/postsecondary-transition-guide-august-2020.pdf; Off. for Civ. Rights, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and*
(continued...)

indicated above, in most contexts outside of P–12 public schools, a person's request for an accommodation ordinarily triggers a covered entity's ADA and Section 504 obligations.[134] Regulations say little about how IHEs may confirm eligibility.[135] Few courts have addressed the subject. The existing case law suggests that if a student requests modifications, accommodations, or auxiliary aids or services (addressed in more detail below),[136] IHEs may (but do not have to) request that the student provide "reasonable" documentation of his or her disability and need for the requested accommodations or services.[137] IHEs set their own documentation requirements, and some commentators observe that students may have trouble securing the necessary paperwork.[138] For example, IHEs may request that students with dyslexia or other learning disabilities provide psychoeducational testing that is no more than three years old establishing their disability. A full psychoeducational battery of tests can take weeks to administer and cost thousands of dollars. Students have successfully challenged triennial evaluation requirements in court, as well as requirements that they be regularly reevaluated even when their disabilities are permanent and they have sufficient (but not recent) proof of their disability status.[139]

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 need for accommodations.[140] Guidance for IHEs from the Association on Higher Education and Disability emphasizes that documentation requirements should be "non-burdensome," that a variety of forms of documentation (including self-reports and past Section 504 or IDEA evaluations) may reliably support a student's eligibility, and that, when required, "[d]isability documentation should be current and relevant but not necessarily 'recent.'"[141]

Responsibilities, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/offices/list/ocr/transition.html (last revised Jan. 10, 2020) [hereinafter *Preparing for Postsecondary Education*].

[134] *See supra* "Identification."

[135] *See* 34 C.F.R. § 104.42(b)(4) (Section 504 regulation allowing IHEs to make post-admission, confidential inquiries as to a person's need for a disability accommodation); 28 C.F.R. § 36.309(b)(iv) (2023) (ADA Title III regulation allowing "reasonable" documentation requests for accommodations for exams). The ADA regulations restrict the documentation that schools can request when people with disabilities seek to use service dogs, wheelchairs, or power-driven mobility devices. 28 C.F.R. §§ 35.136(f), 35.137(c), 36.302(c)(6), 36.311(c).

[136] Auxiliary aids and services allow a person with a disability to communicate effectively. They can include everything from screen reading software or braille materials for blind people to interpreters or real-time computer-aided transcriptions for Deaf people, or any other technology or service that facilitates effective communication. *See* 34 C.F.R. § 104.44(d) (ED Section 504 regulation); 28 C.F.R. § 35.104 (ADA Title II regulation); *id.* § 36.303(b) (ADA Title III regulation).

[137] Vinson v. Thomas, 288 F.3d 1145, 1153 (9th Cir. 2002) ("A public agency may require reasonable evidence of a disability before providing accommodations. . . . A public agency may not, however, insist on data supporting a claim of disability beyond that which would satisfy a reasonable expert in the field."); Guckenberger v. Bos. Univ., 974 F. Supp. 106, 135 (D. Mass. 1997) ("The ADA permits a university to require a student requesting a reasonable accommodation to provide current documentation from a qualified professional concerning his learning disability. . . . Nevertheless, a university cannot impose upon such individuals documentation criteria that unnecessarily screen out or tend to screen out the truly disabled."); TRANSITION GUIDE, *supra* note 133, at 25–26; *Preparing for Postsecondary Education*, *supra* note 133.

[138] Debi Gartland & Roberta Strosnider, *Considerations for Transition from High School to Postsecondary Education*, 46 LEARNING DISABILITY Q. 230, 234–35 (2023).

[139] *See Guckenberger*, 974 F. Supp. at 135–36 (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).

[140] *See Supporting Accommodation Requests: Guidance on Documentation Practices*, ASS'N ON HIGHER EDUC. & DISABILITY (2012), https://www.ahead.org/professional-resources/accommodations/documentation.

[141] *Id.*

Identification and Evaluation of Children with Disabilities: Key Takeaways

- State and local educational agencies must timely identify and evaluate all children with disabilities residing or attending private schools in their jurisdictions for IDEA eligibility and services.
- Section 504 regulations impose similar "Child Find" obligations on P–12 public schools.
- The ADA does not require schools to proactively identify and evaluate children with disabilities.
- Private and postsecondary schools do not have an affirmative obligation to identify and evaluate children with disabilities under any law. Section 504 and the ADA require them to respond to requests for accommodations and to offer accommodations when a student's need is obvious.

Placement

P–12 Education

Public School P–12 Placement

The IDEA and Section 504 set forth similar considerations for determining an appropriate placement for a child with a disability. Placement refers to both the school the child attends (e.g., public or private) and the classrooms, programs, or educational environments the child is in within that school. Perhaps most significantly, both the IDEA and Section 504 require that schools educate children with disabilities in the regular educational environment to the maximum extent appropriate to students' needs.[142] In other words, schools are to educate students with disabilities alongside children without disabilities, and schools are not to place them in separate schools or classes or remove them from the regular classroom unless "education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[143] In IDEA terminology, schools must provide a FAPE in the least restrictive environment (LRE).[144] Both Section 504 and the IDEA also require schools to avoid unnecessarily separating children with disabilities from their peers in nonacademic settings, such as lunch, recess, and extracurricular activities.[145] Section 504's rules requiring the integration of students with disabilities apply to covered public and private schools alike.[146]

Related to the LRE requirement, schools must implement a student's accommodations, special education, and/or related services in all of the student's classes as appropriate, whether they are

[142] 20 U.S.C. § 1412(a)(5) (IDEA); 34 C.F.R. § 104.34 (2023) (Section 504).

[143] 20 U.S.C. § 1412(a)(5)(A); *accord* 34 C.F.R. §§ 104.34(a), 300.114(a), 300.116(a)(2), (e); *see, e.g.*, T.M. *ex rel.* A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 161 (2d Cir. 2014); Off. for Civ. Rights, *Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973*, U.S. DEP'T OF EDUC., http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html (last revised July 2023) [hereinafter *FAPE Requirements Under Section 504*] ("It is illegal to base individual placement decisions on presumptions and stereotypes regarding persons with disabilities or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every student who is hearing impaired, regardless of the severity of the child's disability, must be placed in a state school for the deaf.").

[144] 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114, 300.116. Section 504 does not use the term LRE, but the requirements are similar. 34 C.F.R. § 104.34(a).

[145] 34 C.F.R. §§ 104.34(b), 300.117; *see also id.* § 104.37(a)(1), (c) (Section 504 regulation requiring that students with disabilities have an equal opportunity to participate in extracurricular activities, including integrated athletics); *see generally* U.S. Dep't of Educ., Off. for Civ. Rights, Dear Colleague Letter on Students with Disabilities in Extracurricular Activities (Jan. 25, 2013) [hereinafter DCL re Extracurriculars], https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf (reviewing schools' Section 504 obligations regarding extracurricular activities).

[146] 34 C.F.R. § 104.39(c) (requiring covered private schools to comply with 34 C.F.R. § 104.34).

special education classes, regular education classes, or accelerated classes.[147] Schools cannot refuse to provide needed services and modifications in the general education environment.[148] For example, denying students with disabilities access to accelerated programs such as Advanced Placement and International Baccalaureate classes solely because of students' need for special education or related aids and services violates Section 504 and the IDEA.[149] Schools must also provide "supplementary aids and services" and "reasonable accommodations" to ensure that children with disabilities can participate in nonacademic activities with their peers who do not have disabilities.[150]

The IDEA and Section 504 contemplate that some children with disabilities may not receive all of their education in the regular classroom. Under the IDEA, LEAs must maintain "a continuum of alternative placements."[151] This range includes regular classroom instruction, with the provision of supplementary services when appropriate, as well as "special classes, special schools, home instruction, and instruction in hospitals and institutions."[152] A school district is to educate an IDEA-eligible child in the placement along this "continuum" that is the LRE "that is consonant with his or her needs."[153]

In contrast to the IDEA's focus on ensuring an appropriate placement for each child with a disability, Section 504's main concern is to ensure that schools do not discriminate against children with disabilities when making placement decisions.[154] Section 504 does not require that schools maintain a continuum of placement options. It requires instead that, when a child with a disability does need to attend a facility specifically for children with disabilities, the LEA ensures that the facility and the services and activities it provides are "comparable to the LEA's other facilities, services, and activities."[155]

The IDEA is somewhat more specific than Section 504 as to how LEAs should make placement decisions. For example, the IDEA regulations require 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, including the child's parents, who are knowledgeable about the child, the meaning of the

[147] 20 U.S.C. § 1412(a)(5)(A) (contemplating that schools will provide "supplementary aids and services" in "regular classes"); 34 C.F.R. §§ 104.34(a), 300.114(a)(2)(ii) (same).

[148] 34 C.F.R. § 300.116(e) ("Public agenc[ies] must ensure that . . . a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum."); *see, e.g.*, *T.M.*, 752 F.3d at 161–62.

[149] U.S. Dep't of Educ., Off. for Civ. Rights, Dear Colleague Letter on Access by Students with Disabilities to Accelerated Programs (Dec. 26, 2007) [hereinafter DCL re Accelerated Programs], http://www.ed.gov/about/offices/list/ocr/letters/colleague-20071226.html.

[150] 34 C.F.R. § 300.117; *see id.* § 104.37(a) (requiring schools covered by Section 504 to "provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities"); *infra* "Reasonable Accommodations, Modifications, and Auxiliary Aids and Services."

[151] 34 C.F.R. § 300.115(a).

[152] *Id.* § 300.115(b). A school district need not operate the full "continuum" of placements itself; it can meet its obligations by providing for "free public placements at educational programs operated by other entities, including other public agencies or private schools." T.M. *ex rel.* A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 1615–66 (2d Cir. 2014); *see infra* "Private School P–12 Placement" (discussing placements in private schools).

[153] *T.M.*, 752 F.3d at 161; *see, e.g.*, Falmouth Sch. Dep't v. Doe *ex rel.* Doe, 44 F.4th 23, 29 (1st Cir. 2022) (stating that schools must "strike[] an appropriate balance between the restrictiveness of the placement and educational progress" (citation omitted)).

[154] *See, e.g.*, Durbrow v. Cobb Cnty. Sch. Dist., 887 F.3d 1182, 1190 (11th Cir. 2018); Est. of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 990 (5th Cir. 2014); CG v. Pa. Dep't of Educ., 734 F.3d 229, 234 (3d Cir. 2013); Ellenberg v. N.M. Mil. Inst., 572 F.3d 815, 821–22 (10th Cir. 2009).

[155] 34 C.F.R. § 104.34(c).

evaluation data, and the placement options.[156] In comparison, Section 504 does not require placement decisions to be determined at any particular interval, nor does it require those decisions be based on a written plan like an IEP. ED's Section 504 regulation has a requirement similar to the IDEA's outlining who should make placement decisions, but it omits that the parents must be involved.[157]

The ADA's requirements align with Section 504's, although they are less specific.[158] While neither the ADA nor its regulations speak specifically to educational placement decisions, the ADA forbids the unnecessary segregation of people with disabilities from their peers: schools should serve people with disabilities "in the most integrated setting appropriate to the[ir] needs"[159] and may not provide separate services unless necessary.[160]

Private School P–12 Placement

An LEA can place a child in private school, at the LEA's expense (and with parental consent[161]), in order to meet its IDEA obligations.[162] Parents may enroll their children in private schools at an LEA's expense, even without the LEA's consent, if an LEA does not provide a FAPE to an eligible child in a public school setting.[163] Parents must meet certain procedural requirements before enrolling their children in private schools if they seek full reimbursement from LEAs.[164] Courts have wide leeway to determine appropriate reimbursement levels.[165] For example, a court may reduce reimbursement if it determines that parents chose an unreasonably expensive placement in light of the available options,[166] or if a parent seeks reimbursement for elements of a private education (such as residential boarding or expensive extracurricular activities) that are unnecessary in light of the student's educational needs.[167] Parents who unilaterally enroll their

[156] *Id.* § 300.116(a)–(b).

[157] ED's Section 504 regulations speak in more general terms about how a school should determine the placement of an eligible child with a disability. 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).

[158] *See*, *e.g.*, DCL re Accelerated Programs, *supra* note 149 ("Title II provides no lesser protections than does Section 504."); DCL re Extracurriculars, *supra* note 145, at 2 n.3 ("Violations of Section 504 that result from school districts' failure to meet the obligations identified in this letter also constitute violations of Title II.").

[159] 42 U.S.C. § 12182(b)(1)(B); *accord* 28 C.F.R. §§ 35.130(d), 36.203(a) (2023).

[160] 42 U.S.C. § 12182(b)(1)(A)(iii); 28 C.F.R. §§ 35.130(b)(iv), 36.202(c).

[161] *See* 20 U.S.C. § 1414(a)(1)(D)(ii)(II); 34 C.F.R. § 300.300(b).

[162] 20 U.S.C. § 1412(a)(10)(B); *see, e.g.*, Capistrano Unified Sch. Dist. v. S.W., 21 F.4th 1125, 1138 n.5 (9th Cir. 2021).

[163] 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 241–43, 247 (2009); Sch. Comm. of Town of Burlington v. Dep't of Educ., 471 U.S. 359, 369 (1985). Parents are entitled to reimbursement only if the private placement is "appropriate." 34 C.F.R. § 300.148(c); *see, e.g.*, Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter, 510 U.S. 7, 15 (1993); T.M. *ex rel.* A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 152 (2d Cir. 2014); Mr. I. *ex rel.* L.I. v. Me. Sch. Admin. Dist. No. 55, 480 F.3d 1, 23–25 (1st Cir. 2007).

[164] 20 U.S.C. § 1412(a)(10)(C)(iii)–(iv); 34 C.F.R. § 300.148(d)–(e).

[165] *Florence Cnty.*, 510 U.S. at 16 (quoting *Burlington*, 471 U.S. at 369).

[166] *Id.* ("Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable."); *accord*, *e.g.*, Doe v. Newton Pub. Sch., 48 F.4th 42, 59 (1st Cir. 2022); Leggett v. District of Columbia, 793 F.3d 59, 63, 66–67, 70, 73 (D.C. Cir. 2015).

[167] 34 C.F.R. § 300.104 (stating that the IDEA may require a residential placement at public expense only when a (continued...)

students in private schools are not entitled to reimbursement if their LEA made a FAPE available in a public school setting.[168]

Whether parents can demand private placements at public expense under Section 504 or the ADA is unsettled. The Section 504 regulations and ED guidance strongly suggest that they can if school districts cannot meet an eligible child's needs.[169] Courts, on the other hand, have reached different conclusions. Some courts rely on the Section 504 regulations and their similarity to the IDEA to conclude that Section 504, and sometimes the ADA, can mandate private school placement or tuition reimbursement in certain circumstances.[170] Other courts disagree, holding that private school placement is a fundamental alteration of a school district's services, or that it unduly burdens school district finances, and is therefore beyond what Section 504 and the ADA require.[171] More information on the fundamental alteration and undue burden limitations on school districts' Section 504 and ADA obligations is provided below.

Postsecondary Education: Transition and Admissions

The IDEA requires IEPs to include postsecondary transition goals and services beginning no later than when students are 16 years old.[172] Transition goals and services must be individualized and may differ depending on a student's goals, whether they be continuing education, employment, independent living, or something else.[173] For a student planning to pursue postsecondary education, transition services could include helping the student select colleges to apply to; complete applications; obtain accommodations, such as extended time on standardized college placement tests; practice self-advocacy skills; or any other services that would help the student prepare for postsecondary life, education, or employment.[174] No matter what IDEA transition

"residential program is necessary to provide special education and related services to a child with a disability"); *see, e.g.*, *Leggett*, 793 F.3d at 71 ("The school system may, on remand, seek to demonstrate that specific components of the placement, such as extracurricular activities or the horseback riding to which DCPS so vociferously objects, were not primarily oriented toward educating K.E. and were therefore not necessary under the Act." (citations omitted)); Ashland Sch. Dist. v. Parents of Student R.J., 588 F.3d 1004, 1009–10 (9th Cir. 2009) (denying reimbursement for residential placement when the placement was "a response to medical, social, or emotional problems quite apart from the learning process" (citation and alteration omitted)).

[168] 20 U.S.C. § 1412(a)(10)(C)(i); 34 C.F.R. § 300.148(a); *Burlington*, 471 U.S. at 374.

[169] 34 C.F.R. § 104.33(c)(2)–(4); *FAPE Requirements Under Section 504*, *supra* note 143 ("If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district.").

[170] *E.g.*, Hannah L. v. Downingtown Area Sch. Dist., No. CIV.A. 12-4595, 2014 WL 3709980, at *7 n.5 (E.D. Pa. July 25, 2014), *aff'd sub nom.* H.L. v. Downingtown Area Sch. Dist., 624 F. App'x 64 (3d Cir. 2015); Lauren G. *ex rel.* Scott G. v. W. Chester Area Sch. Dist., 906 F. Supp. 2d 375, 390–91 (E.D. Pa. 2012); Molly L. *ex rel.* B.L. v. Lower Merion Sch. Dist., 194 F. Supp. 2d 422, 429 n.5 (E.D. Pa. 2002); Borough of Palmyra, Bd. of Educ. v. F.C. Through R.C., 2 F. Supp. 2d 637, 642–43 (D.N.J. 1998); *see also* Freeman v. Cavazos, 939 F.2d 1527, 1532 (11th Cir. 1991) (declining to hold that Section 504 can never require a school district to fund a residential placement but determining that whether such a placement was required in the case before it depended on undeveloped facts).

[171] Colin K. by John K. v. Schmidt, 715 F.2d 1, 9 (1st Cir. 1983); Ibata v. Bd. of Educ. of Edwardsville Cmty. Sch. Dist. #7, No. CV 06-173-GPM, 2008 WL 11508975, at *5 (S.D. Ill. Mar. 7, 2008); *see also* Janet G. v. Haw., Dep't of Educ., 410 F. Supp. 2d 958, 967 (D. Haw. 2005) (interpreting the Section 504 regulations to not require private school placement).

[172] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b). Many states require transition planning to start earlier. Mariya T. Davis & Yewon Lee, *Journey into Adulthood: Understanding the Changing Landscape of Transition Planning*, 96 CLEARING HOUSE 137, 139 (2023).

[173] *See* 34 C.F.R. § 300.43(a)(2) (requiring transition services to be "based on the individual child's needs, taking into account" various personal factors).

[174] *See, e.g.*, Gartland & Strosnider, *supra* note 138, at 233, 236; Davis & Lee, *supra* note 172, at 140–41; TRANSITION GUIDE, *supra* note 133, at 23–26.

services students with disabilities receive in high school, those services will end once they exit the P–12 public school system.

Section 504 and the ADA do not require transition services.[175] Rather, they protect students applying to postsecondary institutions from discrimination in recruitment and admissions policies and procedures, including with regard to specific academic programs or courses of study.[176] IHEs must grant students with disabilities reasonable accommodations, including potential waivers from certain admissions requirements; however, they are not required to waive the "essential eligibility requirements" for their programs, including the academic standards.[177]

IHEs may have to modify their admissions policies to avoid disparate impacts on people with disabilities, although the law in this area has become unsettled. The current ADA and Section 504 regulations prohibit IHEs from adopting admissions policies or criteria, including tests, that "screen out or tend to screen out," or "ha[ve] a disproportionate, adverse effect on," applicants with disabilities, unless such policies are necessary to achieve the IHE's goals and no option with a lesser adverse impact is available.[178] Whether ED has properly interpreted Section 504 to allow for disparate impact liability is a subject of debate in the courts, discussed further below.[179]

The ADA also requires private entities offering educational, professional, or trade examinations or courses to provide accessible services.[180] These rules apply to entities like the College Board, ACT, Inc., and others that offer tests used in undergraduate and graduate admissions.[181] Testing providers must provide reasonable accommodations and auxiliary aids and services.[182] Admissions and other tests must be designed so that they measure the skills the tests purport to measure, not students' disabilities.[183]

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[175] While Section 504 does not entitle students with disabilities to transition services (unless schools provide those services to all students), other parts of the Rehabilitation Act governing programs administered by state vocational rehabilitation agencies authorize and fund transition services. *See* 29 U.S.C. §§ 723(a)(15), (b)(7), 730(d), 733; TRANSITION GUIDE, *supra* note 133, at 12–16. Vocational rehabilitation services are beyond the scope of this report. For more information on this subject, see CRS Report R43855, *Rehabilitation Act: Vocational Rehabilitation State Grants*, by Benjamin Collins (2014).

[176] 34 C.F.R. §§ 104.42, 104.43(c); *see, e.g.*, Power v. Univ. of N.D. Sch. of L., 954 F.3d 1047, 1052 (8th Cir. 2020) (analyzing ADA claims regarding law school admissions); Sjostrand v. Ohio State Univ., 750 F.3d 596, 599, 602 (6th Cir. 2014) (analyzing ADA and Section 504 claims regarding graduate program admissions).

[177] *See* 28 C.F.R. § 35.104 (2023) (defining "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity"); *id.* §§ 35.130(b)(7)(i), 36.302(a) (requiring reasonable modifications so long as they do not fundamentally alter program requirements); 34 C.F.R. § 104.44(a) (similar); *id.* pt. 104 app. A (explaining that individuals are "qualified" for postsecondary programs when they meet both the academic program standards and "all nonacademic admissions criteria that are essential to participation in the program in question"); Se. Cmty. Coll. v. Davis, 442 U.S. 397, 412–13 & n.12 (1979); Halpern v. Wake Forest Univ. Health Scis., 669 F.3d 454, 462 & n.3, 464 (4th Cir. 2012).

[178] *See* 28 C.F.R. §§ 35.130(b)(8), 36.301(a); 34 C.F.R. § 104.42(b)(2); *see* 34 C.F.R. § 104.4(b)(4)(i) (prohibiting entities covered by Section 504 from "utiliz[ing] criteria or methods of administration that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap"); 28 C.F.R. § 35.130(b)(3) (similar ADA Title II regulation); *id.* § 36.204 (similar ADA Title III regulation). ED specifically requires that IHEs covered by Section 504 use only admissions tests and criteria that have "been validated as a predictor of success in the education program or activity in question." 34 C.F.R. § 104.42(b)(2)(i).

[179] *See infra* "Disparate Impact."

[180] 42 U.S.C. § 12189; 28 C.F.R. § 36.309(a).

[181] *See, e.g.*, Valles v. ACT, Inc., No. 4:22-CV-00568, 2022 WL 2789900, at *3 (E.D. Tex. July 15, 2022); Rumbin v. Ass'n of Am. Med. Colleges, 803 F. Supp. 2d 83, 92 (D. Conn. 2011).

[182] *See* 28 C.F.R. § 36.309(b).

[183] 28 C.F.R. § 36.309(b)(1)(i); 34 C.F.R. § 104.42(b)(3)(i).

Placement: Key Takeaways

- The IDEA, Section 504, and the ADA all require P–12 schools to serve students with disabilities in integrated environments to the maximum extent appropriate to students' needs.
- The IDEA requires LEAs to maintain a continuum of placement options to ensure they can provide a FAPE to students with a variety of disability-related needs. Section 504 and the ADA require only that placement decisions be nondiscriminatory.
- The IDEA may require LEAs to pay for private placements. Whether Section 504 or the ADA impose similar obligations is unsettled.
- Only the IDEA requires schools to engage in transition planning for students with disabilities. Only Section 504 and the ADA require nondiscriminatory admissions programs to postsecondary schools.

Services for Students with Disabilities

Free Appropriate Public Education (FAPE)

The IDEA's "core guarantee" is that public schools will provide eligible students with a FAPE.[184] ED interprets Section 504 to also require federally funded P–12 public schools to provide a FAPE.[185] The ADA's statutory and regulatory provisions are largely not education specific,[186] and none mention the concept of a FAPE. Nevertheless, reflecting the general rule that the ADA and Section 504 should be interpreted congruently,[187] some (but not all) courts have held, and ED agrees, that the ADA requires schools to meet the same FAPE requirements as Section 504.[188] None of these laws extend the right to a FAPE to postsecondary education programs.[189]

While in practice these three laws may entitle students to similar services,[190] the concept of a FAPE under the IDEA is different from that under Section 504 and the ADA. The distinctions reflect a basic difference in statutory design: "the IDEA guarantees individually tailored

[184] Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 158 (2017).

[185] 34 C.F.R. § 104.33(a).

[186] The exceptions are 42 U.S.C. §§ 12181(7)(J), 12189, and 12201(f); and 28 C.F.R. §§ 35.151(f), 36.309, and 36.406(e).

[187] *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); *supra* note 49 and accompanying text.

[188] A. *ex rel.* A. v. Hartford Bd. of Educ., 976 F. Supp. 2d 164, 190, 194 (D. Conn. 2013); *see* ARC of Iowa v. Reynolds, 559 F. Supp. 3d 861, 875 (S.D. Iowa 2021); J.M. by & Through Mata v. Tenn. Dep't of Educ., 358 F. Supp. 3d 736, 750 (M.D. Tenn. 2018); Sch. Dist. of Phila. v. Post, 262 F. Supp. 3d 178, 199 (E.D. Pa. 2017); *FAPE Requirements Under Section 504*, *supra* note 143, at n.1 ("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."). *But see* K.M. *ex rel.* Bright v. Tustin Unified Sch. Dist., 725 F.3d 1088, 1099 (9th Cir. 2013) ("Title II does not impose any FAPE requirement.").

[189] *See* 20 U.S.C. § 1401(9) (2023) (limiting a FAPE to "an appropriate preschool, elementary school, or secondary school education"); 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"); *Preparing for Postsecondary Education*, *supra* note 133. Under the IDEA, states must provide a FAPE 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 2024, 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.

[190] *See, e.g.*, Durbrow v. Cobb Cnty. Sch. Dist., 887 F.3d 1182, 1190 (11th Cir. 2018) ("The same misconduct committed by a school district may warrant relief under the IDEA, § 504, or the ADA."); Ridgewood Bd. of Educ. v. N.E. *ex rel.* M.E., 172 F.3d 238, 253 (3d Cir. 1999) ("We have held that there are few differences, if any, between IDEA's affirmative duty and § 504's negative prohibition . . . .").

educational services, while Title II [of the ADA] and [Section] 504 promise nondiscriminatory access to public institutions."[191] The following sections review the differences between the IDEA and Section 504 and ADA FAPE requirements.

FAPE Requirements Under the IDEA

Part B of the IDEA requires every state receiving IDEA funds to offer a FAPE to each child with a disability living in the state.[192] The IEP, a written document specifying the particular services that an LEA will provide, is the "primary vehicle" for making sure children with disabilities receive a FAPE.[193] The IDEA details with considerable specificity the persons who must be involved when developing an IEP (the IEP team), the process the IEP team should follow, and the information an IEP must include.[194] At a basic level, an IEP details the child's present academic and functional performance, establishes goals for the child and how educators will measure progress, and describes the child's placement and services.[195] Parents must be included on the IEP team and must consent to IDEA services.[196] Unlike with evaluations, LEAs may not seek to override parental refusals to consent to the initial provision of IDEA services.[197]

What a FAPE entails, and what it demands of a school district, varies from student to student. Fundamentally, a FAPE consists of "special education and related services."[198] "Special education" is "specially designed instruction" that "meets the unique needs of a child with a disability."[199] It may include instruction conducted in both academic and nonacademic settings, including in the classroom, in the home, or in hospitals or institutions, as well as instruction in physical education.[200] "Related services" are "supportive services . . . required to assist a child with a disability to benefit from special education."[201] Nursing services during the school day for

[191] Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 170–71 (2017).

[192] 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 that schools provide a FAPE. *See* 20 U.S.C. § 1412(1)(1)(B); 34 C.F.R. § 300.102.

[193] *Fry*, 580 U.S. at 158 (quoting Honig v. Doe, 484 U.S. 305, 311 (1988)); *see also* 20 U.S.C. § 1414(d).

[194] 20 U.S.C. § 1414(d), (f); *see, e.g.*, Endrew F. *ex rel.* Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 391 (2017) (summarizing requirements).

[195] 20 U.S.C. § 1414(d)(1)(A); *see, e.g.*, *Fry*, 580 U.S. at 158–59; J.N. next friend of M.N. v. Jefferson Cnty. Bd. of Educ., 12 F.4th 1355, 1362 (11th Cir. 2021).

[196] 20 U.S.C. § 1414(a)(1)(D)(i)(II), (ii)(II)–(III), (d)(1)(B)(i).

[197] *Id.* § 1414(a)(1)(D)(ii)(II)–(III); 34 C.F.R. § 300.300(b)(3); *Frequently Asked Questions About Section 504*, *supra* note 105, at Q.44. Whether an LEA can seek to override parental refusals to consent to changes in IDEA services is unclear. ED's regulations prohibit an LEA from initiating a due process hearing if a parent revokes consent for IDEA services in writing. 34 C.F.R. § 300.300(b)(4)(ii); *see also* Durkee v. Livonia Cent. Sch. Dist., 487 F. Supp. 2d 313, 316 (W.D.N.Y. 2007) ("The Act explicitly recognizes that a parent or guardian is free to refuse any publicly-funded special education services offered by the district."). However, without citing this regulation, at least one court has interpreted the IDEA to prohibit LEAs only from challenging parental refusals to consent to the initial provision of IDEA services and to allow LEAs to initiate due process hearings to challenge parental refusals to consent to specific services. I.R. *ex rel.* E.N. v. L.A. Unified Sch. Dist., 805 F.3d 1164, 1168 (9th Cir. 2015). The court relied in part on a provision of the IDEA requiring LEAs and SEAs to maintain procedures that allow "any party" to file a due process complaint "with respect to any matter relating to the . . . educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6)(A).

[198] 20 U.S.C. § 1401(9).

[199] *Id.* § 1401(29).

[200] *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 (2019).

[201] 20 U.S.C. § 1401(26)(A).

a student who relies on a ventilator, for example, may be a related service.[202] Related services can include transportation, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, social work services, counseling services, and school nurse services, among other things.[203] Schools must provide related services only when a child *also* requires special education.[204] A child who needs disability-related services but no specialized instruction may be eligible for a Section 504 plan, discussed below, but not an IEP.

A school district successfully provides a FAPE only when it satisfies the IDEA's "checklist" of requirements: that special education and related services are "provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP."[205] Beyond that, the IDEA does not define the quality of education owed to students with disabilities.[206] That ambiguity has provoked one of the most commonly litigated questions under the act: What is an "appropriate" public education?[207]

In two decisions, *Board of Education v. Rowley*[208] and *Endrew F. v. Douglas County School District*,[209] the Supreme Court rejected arguments both that the FAPE requirement was "merely aspirational," imposing no enforceable substantive standards,[210] and that the IDEA required schools to "achieve strict equality of opportunity or services" between children with and without disabilities.[211] Instead, it charted a middle course: to provide a FAPE, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[212] Children must receive more than minimal educational benefits, but the precise contours of a FAPE depend on the child's individual circumstances.[213] The Court expects that for most children in regular classrooms, IDEA services designed to enable the children to pass their classes and advance from grade to grade provide a FAPE.[214] When regular advancement through the curriculum is not possible, an IEP must still be "appropriately ambitious" and allow the child "the chance to meet challenging objectives."[215] Courts judge an IEP by its design, not by its effect—the fact that a child has not met grade-level expectations, for example, does not

[202] *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 were a "related service").

[203] 20 U.S.C. § 1401(26).

[204] Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 894 (1984); *see* Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E. *ex rel.* Roxanne B., 702 F.3d 1227, 1236 (10th Cir. 2012).

[205] Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982); *see* 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

[206] *Rowley*, 458 U.S. at 189 ("Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children."); T.R. v. Sch. Dist. of Phila., 4 F.4th 179, 183 (3d Cir. 2021); *see* DEREK W. BLACK, EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM 467 (3d ed. 2021) (describing the term "appropriate" as among the "most ambiguous" in the IDEA).

[207] BLACK, *supra* note 206, at 467 (stating that this question continues to be "heavily litigated").

[208] 458 U.S. 176 (1982).

[209] 580 U.S. 386 (2017).

[210] *Endrew F.*, 580 U.S. at 393.

[211] *Rowley*, 458 U.S. at 187–88, 198–99.

[212] *Endrew F.*, 580 U.S. at 399.

[213] *Id.* at 397–99, 402–04.

[214] *Id.* at 401 (quoting *Rowley*, 458 U.S. at 203–04). The Court cautioned that this is not an "inflexible rule," even for children integrated into regular classrooms: it "declined to . . . hold . . . that 'every handicapped child who is advancing from grade to grade . . . is automatically receiving a [FAPE].'" *Id.* at 402 n.2 (quoting *Rowley*, 458 U.S. at 203 n.25).

[215] *Id.* at 402.

automatically mean a school district has failed to provide a FAPE.[216] The Supreme Court also expects judges to give at least some deference to the expertise of school authorities.[217] The standard "is whether the IEP is *reasonable*, not whether the court regards it as ideal."[218]

FAPE Requirements Under Section 504 and the ADA

As discussed, there are no specific ADA statutory or regulatory provisions regarding a FAPE; ED and courts (to the extent they hold the ADA requires a FAPE) apply ED's Section 504 regulations.[219] This section therefore refers to the Section 504 standards without separate discussion of the ADA.

ED's Section 504 regulations do not tell schools how to develop a plan for providing Section 504 services, or even require such information to be written down. As a practical matter, many schools do develop such documents, known colloquially as Section 504 plans.[220] While the IDEA specifies the members who must be invited to participate in a child's IEP team, including the child's parents,[221] no similar requirement appears in Section 504 or its regulations.[222] While the IDEA specifies that an IEP must contain certain information, including but not limited to information about the child's academic level, goals, and how his or her progress will be measured,[223] neither Section 504 nor the regulations require any specific content in a Section 504 plan.[224]

As under the IDEA, Section 504 requires schools to provide a FAPE free of cost (except for the same fees imposed on students without disabilities), although schools can use private and public funds.[225] Rather than institute a substantive standard for a FAPE under Section 504, ED defines an "appropriate education" comparatively: an "appropriate education" is "the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met."[226] Section 504 services are not intrinsically connected to a student's need for "special education"—a

[216] *See* Crofts v. Issaquah Sch. Dist. No. 411, 22 F.4th 1048, 1057 (9th Cir. 2022); *see also, e.g.*, D.O. By & Through Walker v. Escondido Union Sch. Dist., 59 F.4th 394, 416 (9th Cir. 2023) (stating that the quality of an IEP is not judged in hindsight); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990) (same).

[217] *Endrew F.*, 580 U.S. at 404.

[218] *Id.* at 399; *see, e.g.*, *Crofts*, 22 F.4th at 1056–57; Leigh Ann H. v. Riesel Indep. Sch. Dist., 18 F.4th 788, 799 (5th Cir. 2021).

[219] *See supra* note 188 and accompanying text.

[220] OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 10.

[221] 20 U.S.C. § 1414(d)(1)(B).

[222] 34 C.F.R. § 104.35(c) (2023). 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 that certain people (e.g., parents or the classroom teacher) always be included in that group. *Id.* § 104.35(c)(3).

[223] 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 300.320.

[224] *See generally* 34 C.F.R. §§ 104.32–104.39.

[225] 34 C.F.R. § 104.33(c)(1).

[226] *Id.* § 104.33(b)(1); *see, e.g.*, Mark H. v. Lemahieu, 513 F.3d 922, 933 (9th Cir. 2008) ("[U]nlike FAPE under the IDEA, FAPE under § 504 is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met."); Kimble v. Douglas Cnty. Sch. Dist. RE-1, 925 F. Supp. 2d 1176, 1181–82 (D. Colo. 2013) (same); Torrence v. District of Columbia, 669 F. Supp. 2d 68, 71–72 (D.D.C. 2009) (same); *FAPE Requirements Under Section 504*, *supra* note 143 ("The quality of education services provided to students with disabilities must equal the quality of services provided to nondisabled students.").

Section 504 FAPE can be accomplished with "regular" education.[227] In addition, to provide a FAPE under Section 504, a school district must follow Section 504's requirements regarding integrated placements and evaluation procedures, discussed above, and its due process procedures, discussed below.[228]

A number of courts have held that a school district that provides a student with a FAPE in accordance with the IDEA also satisfies Section 504's FAPE requirement,[229] while a Section 504 FAPE may not always satisfy the IDEA's demands.[230] However, courts do *not* agree on whether the *denial* of a FAPE under the IDEA also necessarily violates Section 504. Some courts hold that a valid claim under the IDEA will "almost always" support one under Section 504.[231] Even in those jurisdictions, however, judges usually hold that plaintiffs may receive *damages* under Section 504 for the denial of a FAPE only when they prove some form of intent—at least "deliberate indifference."[232] (Remedies under the IDEA, Section 504, and the ADA are discussed in further detail below.) Other courts go further, holding that plaintiffs must show intent—often characterized as "bad faith," "gross misjudgment," or "animus"—to make out any Section 504 claim for the denial of educational services, regardless of the remedy sought.[233]

FAPE in Private Schools

Because the IDEA is designed to improve the education of all children with qualifying disabilities, the act provides some benefits and services to eligible children enrolled in private schools.[234] However, not all qualifying students with disabilities in private schools are entitled to the full panoply of IDEA services, and the IDEA makes no demands of private schools directly—

[227] 34 C.F.R. § 104.33(b)(1); *Frequently Asked Questions About Section 504*, *supra* note 105, at Q.4; *see FAPE Requirements Under Section 504*, *supra* note 143 (defining an "appropriate education").

[228] 34 C.F.R. § 104.33(b)(1)(ii).

[229] Est. of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 992–93 (5th Cir. 2014) (collecting cases).

[230] Muller on Behalf of Muller v. Comm. on Special Educ. of E. Islip Union Free Sch. Dist., 145 F.3d 95, 105 & n.9 (2d Cir. 1998); *Kimble*, 925 F. Supp. 2d at 1182.

[231] *See, e.g.*, Andrew M. v. Del. Cnty. Off. of Mental Health & 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"); M.D. v. Colonial Sch. Dist., 539 F. Supp. 3d 380, 397–98 (E.D. Pa. 2021) ("In most circumstances, establishing a denial of a FAPE suffices to establish a § 504 claim."). The reverse, however, need not be true: a violation of Section 504 or the ADA need not implicate the IDEA at all. *See Fry*, 580 U.S. at 171 (observing 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"). For more information on protections under Section 504 that are unavailable under the IDEA, see *infra* "Other Protections."

[232] *See* S.H. *ex rel.* Durrell v. Lower Merion Sch. Dist., 729 F.3d 248, 263 (3d Cir. 2013); Mark H. v. Lemahieu, 513 F.3d 922, 939 (9th Cir. 2008). *But see* I.L. through Taylor v. Knox Cnty. Bd. of Educ., 257 F. Supp. 3d 946, 965–69 (E.D. Tenn. 2017) (holding that plaintiffs were not required to prove intent to seek either damages or injunctive relief for the denial of a FAPE under Section 504 or Title II), *aff'd on other grounds sub nom.* I.L. by & through Taylor v. Tenn. Dep't of Educ., 739 F. App'x 319 (6th Cir. 2018).

[233] *E.g.*, C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 841 (2d Cir. 2014) (requiring "bad faith or gross misjudgment"); B.M. *ex rel.* Miller v. S. Callaway R-II Sch. Dist., 732 F.3d 882, 887 (8th Cir. 2013) (same); D.B. *ex rel.* Elizabeth B. v. Esposito, 675 F.3d 26, 40 (1st Cir. 2012) (requiring "disability-based animus"); Sellers v. Sch. Bd., 141 F.3d 524, 528–29 (4th Cir. 1998) (requiring "bad faith or gross misjudgment"); *see also, e.g.*, T.H. as next friend T.B. v. DeKalb Cnty. Sch. Dist., 564 F. Supp. 3d 1349, 1361 (N.D. Ga. 2021) (requiring at least "deliberate indifference").

[234] *See generally* 20 U.S.C. § 1412(a)(10); 34 C.F.R. §§ 300.129–300.144 (2023); 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 (2011), https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf.

the public LEA and SEA remain responsible for fulfilling obligations to privately educated students.[235]

Students referred to or placed in private schools by their LEAs must receive IEPs and have the same rights they would have if they were attending public school, including the right to a FAPE.[236] Students placed by their parents in private schools (parentally placed children), on the other hand, are not entitled to a FAPE.[237] Instead, the IDEA requires LEAs to engage in "meaningful consultation" with representatives of private schools and parents to determine, among other things, the services the LEA will provide.[238] When an LEA determines that a parentally placed child should receive special education and related services, it coordinates with the private school to develop a "services plan" that meets the requirements of an IEP "to the extent appropriate."[239] Public employees, or contractors under "public supervision and control," should provide the designated services, which must be "secular, neutral, and nonideological."[240] The IDEA does not guarantee that every parentally placed child with an IDEA-eligible disability will receive IDEA services.[241]

The Section 504 regulations addressing students with disabilities in private schools are spare. As under the IDEA, they do not guarantee a FAPE to all private school students with disabilities. Instead, they provide that private schools receiving federal funds must make only "minor adjustments" to provide an "appropriate education"[242]—i.e., to provide educational services designed to meet the needs of students with disabilities.[243] ED's Section 504 regulations also allow private schools to charge students with disabilities if providing services comes with substantial costs.[244]

Little case law exists interpreting the Section 504 "minor adjustments" regulation.[245] How this regulation interacts with the rest of Section 504 is unclear. Statutorily, Section 504 does not

[235] St. Johnsbury Acad. v. D.H., 240 F.3d 163, 170 (2d Cir. 2001).

[236] 20 U.S.C. § 1412(a)(10)(B).

[237] *See* 34 C.F.R. § 300.137(a) ("No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school."); *id.* § 300.138(a)(2) ("Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.").

[238] 20 U.S.C. § 1412(a)(10)(A)(iii)(IV).

[239] 34 C.F.R. §§ 300.132(b), 300.137(c), 300.138(b).

[240] 20 U.S.C. § 1412(a)(10)(A)(vi); 34 C.F.R. §§ 300.138(c), 300.142(b).

[241] 34 C.F.R. § 300.137(a); *see* 20 U.S.C. § 1412(a)(10)(A)(iii)(IV) (requiring consultation between LEAs, private schools, and parents regarding, among other things, how special education and related services "will be apportioned if funds are insufficient to serve all children"); 34 C.F.R. § 300.134(d)(2) (same).

[242] 34 C.F.R. § 104.39(a).

[243] *Id.* § 104.33(b)(1).

[244] *Id*. § 104.39(b).

[245] CRS has located only three cases applying the "minor adjustments regulation," none of which shed much light on what it requires or how it interacts with Section 504's other provisions. *See* Doe v. Abington Friends Sch., No. CV 22-0014, 2022 WL 16722322, at *7 (E.D. Pa. Nov. 4, 2022); E.R. by & Through B.R. v. St. Martin's Episcopal Sch., No. CV 21-2066, 2022 WL 558168, at *3 (E.D. La. Feb. 24, 2022) ("'Minor adjustment' is not defined in the regulations. Nor has the court located any controlling case law defining it."); Hunt v. St. Peter Sch., 963 F. Supp. 843, 852 (W.D. Mo. 1997) ("I have been unable to identify a case interpreting minor adjustment . . . ."); *see also* Daggett, *supra* note 15, at 301 (referring to the term "minor adjustments" as "undefined and largely uninterpreted"). In a case involving a parochial private school (where the ADA did not apply), one court held that a "minor adjustment is less than a reasonable accommodation" and that the school was not required to provide reasonable accommodations. *Hunt*, 963 F. Supp. at 852. In another case against a parochial private school, a court stated that "a private school's obligations to students with disabilities under § 504 are less onerous than those imposed on public schools" but held that the student (continued...)

distinguish between private and public schools (or between schools and other federally funded programs). Private schools covered by Section 504 are bound not only by the "minor adjustments" regulation, but by other regulations requiring schools to integrate children with disabilities into classrooms with other children "to the maximum extent appropriate," including by providing "supplementary aids and services."[246] These requirements could demand more than "minor adjustments." Moreover, Section 504's general prohibitions on discrimination apply to federally funded private schools,[247] while Title III of the ADA applies to all nonparochial private schools.[248] Together, while these laws may not require private schools to provide the same suite of services as the IDEA, they often require similar services in the form of reasonable accommodations or modifications and auxiliary aids and services—and neither Section 504 nor the ADA limit the required modifications, aids, and services to those representing only "minor adjustments."[249] Reasonable accommodations, modifications, and auxiliary aids and services are the subject of the next section of this report.

FAPE: Key Takeaways

- The centerpiece of the IDEA is the guarantee to eligible students of a FAPE. A FAPE under the IDEA means the provision of special education (i.e., specialized instruction) and related services (i.e., supportive services to help students benefit from school). Schools provide a FAPE by developing and carrying out IEPs.
- An IEP meets the IDEA's substantive requirements for a FAPE when it is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."
- By regulation, Section 504 also requires school districts to provide a FAPE, and some (but not all) courts therefore interpret the ADA to impose a similar obligation. Schools often develop Section 504 plans to document the services provided to eligible students.
- A FAPE under Section 504 means "the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met."
- Parentally placed private school students are not entitled to a FAPE under the IDEA. Section 504's FAPE regulation does not apply to private schools, but both the ADA and Section 504's nondiscrimination and reasonable accommodation mandates apply in the private school setting.

Reasonable Accommodations, Modifications, and Auxiliary Aids and Services

If a FAPE is the centerpiece of the IDEA, reasonable accommodations and modifications are the mainstay of Section 504 and ADA claims. An accommodation is a change in a school's policies, practices, or environment to enable a student with a disability to enjoy equal opportunities.[250] In 1985, the Supreme Court interpreted Section 504 to require recipients of federal funds to make "reasonable accommodations" when necessary to provide people with disabilities "meaningful access" to their programs and activities.[251] In 1990, Congress adopted a similar requirement in the ADA, requiring both public and private covered entities—including public and covered private

had pled a Section 504 claim when she alleged that her school "did not provide any accommodations." *Doe*, 2022 WL 16722322, at *7.

[246] 34 C.F.R. § 104.34(a) (applied to private schools by 34 C.F.R. § 104.39(c)).

[247] *See id.* § 104.4.

[248] *See supra* "Section 504 of the Rehabilitation Act of 1973."

[249] *See infra* "Reasonable Accommodations, Modifications, and Auxiliary Aids and Services."

[250] Guckenberger v. Bos. Univ., 974 F. Supp. 106, 144 (D. Mass. 1997); *see* OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 30 ("In some situations, providing an equal opportunity (that is, providing aids, benefits, or services that are as effective as those provided to others) requires *different* treatment for a student with a disability.").

[251] Alexander v. Choate, 469 U.S. 287, 301 (1985).

schools—to make "reasonable modifications"[252] when necessary to provide nondiscriminatory access to people with disabilities.[253] Courts tend to interpret Section 504 and the ADA's reasonable accommodation requirements to impose the same substantive standard, regardless of which statute is invoked.[254] Elementary, secondary, and postsecondary institutions must all provide reasonable accommodations, and they must provide them in all school-related contexts, including academics, extracurricular activities, and other services offered by the school, such as transportation and housing.[255]

Accommodations can include, among other things, changes or exceptions to policies, programs, or procedures, such as providing extra time on tests or assignments, making course substitutions, or allowing service dogs at school; the removal or restructuring of physical barriers, such as building a ramp, moving an activity to an accessible space, or allowing a student to use the faculty elevator; or the provision of services or aids, such as tutoring or medication administration.[256] A school is not required to eliminate an essential part of a program to accommodate a student with a disability.[257]

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[252] 42 U.S.C. § 12182(b)(2)(A)(ii) (Title III); 28 C.F.R. § 36.302(a) (2023) (same). Title II prohibits discrimination against "qualified individual[s] with a disability." 42 U.S.C. § 12132. A "qualified individual with a disability" is "an individual with a disability who, with or without reasonable modifications . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." *Id.* § 12131(2). Title II therefore requires public entities to provide reasonable modifications. 28 C.F.R. § 35.130(b)(7); *see* Berardelli v. Allied Servs. Inst. of Rehab. Med., 900 F.3d 104, 114–17 (3d Cir. 2018) (reviewing the legislative history of the reasonable accommodations requirements under Section 504 and the ADA).

[253] Title II and Title III of the ADA refer to "reasonable modifications." 42 U.S.C. §§ 12131(2), 12182(b)(2)(A)(ii). Other parts of the ADA, including the sections defining disability and Title I (which covers employment discrimination), refer to "reasonable accommodations." *E.g.*, *id.* §§ 12102(4), 12111(8)–(9), 12112(b)(5)(A), 12202(h). Case law under the Rehabilitation Act uses both "reasonable accommodations" and "reasonable modifications." Alexander v. Choate, 469 U.S. 287, 300–01 (1985). In practice, courts tend to use these terms interchangeably. *See, e.g.*, Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 n.4 (9th Cir. 2021); McElwee v. County of Orange, 700 F.3d 635, 641 n.2 (2d Cir. 2012). This report adopts that approach.

[254] *E.g.*, *Berardelli*, 900 F.3d at 117; Halpern v. Wake Forest Univ. Health Scis., 669 F.3d 454, 462 n.5 (4th Cir. 2012); *see* Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 159–60 (2017) ("A regulation implementing Title II requires a public entity to make reasonable modifications to its policies, practices, or procedures when necessary to avoid such discrimination. In similar vein, courts have interpreted § 504 as demanding certain 'reasonable' modifications to existing practices in order to 'accommodate' persons with disabilities." (citations omitted)).

[255] *Disability Discrimination FAQs*, *supra* note 30 ("Section 504 covers all the operations of a school or college that receives financial assistance including academics, extracurricular activities, athletics, and other programs."); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 27; *Preparing for Postsecondary Education*, *supra* note 133; *see* 34 C.F.R. § 104.37(a) (2023) (Section 504 regulation requiring that schools "provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities"); Barden v. City of Sacramento, 292 F.3d 1073, 1076 (9th Cir. 2002) ("Rather than determining whether each function of a city can be characterized as a service, program, or activity for purposes of Title II, however, we have construed the ADA's broad language as bringing within its scope anything a public entity does." (cleaned up)); K.N. v. Gloucester City Bd. of Educ., 379 F. Supp. 3d 334, 345, 349–50 (D.N.J. 2019) (holding that Section 504 and Title II require schools to provide supports in after-school programs); *see also* 28 C.F.R. §§ 35.151(f), 36.406(e) (ADA regulations requiring educational housing to be accessible); *id.* § 36.310 (Title III regulation requiring accessible transportation services); 34 C.F.R. §§ 104.43–104.47 (nondiscrimination requirements under Section 504 in postsecondary education).

[256] *See* 34 C.F.R. § 104.44(a)–(c) (describing accommodations in postsecondary institutions); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 5, 14, 28–29; *Disability Discrimination FAQs*, *supra* note 30; *Preparing for Postsecondary Education*, *supra* note 133; Bonnie Poitras Tucker, *Application of the Americans with Disabilities Act (ADA) and Section 504 to Colleges and Universities: An Overview and Discussion of Special Issues Relating to Students*, 23 J.C. & U.L. 1, 15–25 (1996). Schools must also meet standards for accessible construction. *See generally* 28 C.F.R. §§ 35.151, 36.401–36.406.

[257] 34 C.F.R. § 104.44(a) (IHEs not required to adjust "essential" academic requirements); *Preparing for*

(continued...)

Schools must also furnish "auxiliary aids and services" when necessary to ensure effective communication with students with disabilities.[258] Examples of auxiliary aids and services can include interpreters, transcription services, materials in accessible formats (e.g., videos with captions or embedded signing for Deaf students, or braille or accessible digital material for blind students), readers, specialized equipment, and a variety of other communication aids.[259] The ADA regulations state that auxiliary aids and services are effective only when they are timely provided and when they protect the user's privacy and independence.[260]

No one set of accommodations or auxiliary aids and services is always required. What is reasonable depends on the individual facts of each situation and can vary considerably by context.[261] For example, certain academic criteria that could be waived or modified in the elementary and secondary context might be essential in a postsecondary program.[262] One Deaf student might be fluent in American Sign Language and require an interpreter while another may need real-time captioning.[263]

Reasonable accommodations required by the ADA and Section 504 may overlap with special education and related services required by the IDEA. Nevertheless, there are several important distinctions. First, reasonable accommodations can be, but do not have to be, related to specialized instruction and the provision of a FAPE.[264] For example, a child who relies on a service animal for independent mobility may need a waiver of a school's policy barring animals on campus. In that case, she would need an accommodation but not necessarily special education or related services. She would be protected by Section 504 and the ADA but not necessarily by the IDEA.[265]

Second, the ADA and Section 504 limit schools' obligations in ways the IDEA does not. Under the ADA and Section 504, a school does not have to do anything resulting in (1) "a fundamental alteration in the nature of a service, program, or activity" or (2) "undue financial and

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Postsecondary Education, *supra* note 133; *see* 42 U.S.C. §§ 12131(2), 12132 (people with disabilities are "qualified" and therefore protected under Title II when they meet a program's "essential eligibility requirements"); 34 C.F.R. §§ 104.3(l)(4), 104.4(a) (same, under Section 504).

[258] 42 U.S.C. §§ 12131(2), 12182(b)(2)(A)(ii); 28 C.F.R. §§ 35.160, 36.303(c); 34 C.F.R. § 104.44(d). Title II's effective communication regulation is particularly specific, requiring public entities to ensure that their communications with people with disabilities are "as effective" as communications with others. 28 C.F.R. § 35.160(a)(1). For an in-depth treatment of Title II's effective communication requirements, see *K.M. ex rel. Bright v. Tustin Unified School District*, 725 F.3d 1088 (9th Cir. 2013).

[259] 42 U.S.C. § 12103(1); 28 C.F.R. §§ 35.104, 36.303(b); 34 C.F.R. § 104.44(d)(2); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 43.

[260] 28 C.F.R. §§ 35.160(b)(2), 36.303(c)(1)(ii).

[261] Wong v. Regents of Univ. of Cal., 192 F.3d 807, 818, 820–21 (9th Cir. 1999); Zukle v. Regents of Univ. of Cal., 166 F.3d 1041, 1050 (9th Cir. 1999).

[262] *See* Se. Cmty. Coll. v. Davis, 442 U.S. 397, 408–10 (1979) (holding that nursing school was not required to excuse Deaf applicant from certain training or to waive requirement that students understand speech); Guckenberger v. Bos. Univ., 974 F. Supp. 106, 145–46 (D. Mass. 1997) (reviewing the law regarding course waivers and substitutions in the university context).

[263] *See* 28 C.F.R. § 35.104 (listing potential auxiliary aids and services under Title II); *id.* § 36.303(b) (same, for Title III).

[264] *See, e.g.*, Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 167–68 (2017); McIntyre v. Eugene Sch. Dist. 4J, 976 F.3d 902, 915–17 (9th Cir. 2020).

[265] *See, e.g.*, Doucette v. Georgetown Pub. Sch., 936 F.3d 16, 24–25 & n.12 (1st Cir. 2019); Alboniga v. Sch. Bd., 87 F. Supp. 3d 1319, 1329 (S.D. Fla. 2015); *see also, e.g.*, J.S., III by & through J.S. Jr. v. Houston Cnty. Bd. of Educ., 877 F.3d 979, 986 (11th Cir. 2017) ("For example, an allegation that a school building lacks access to ramps would likely state a claim under Title II, whereas an allegation that a student with a learning disability was not provided remedial tutoring in mathematics would likely assert a claim only for the denial of a FAPE.").

administrative burdens."[266] The onus is on the school to prove fundamental alteration or undue burden.[267] Whether an accommodation constitutes a fundamental alteration or an undue burden depends on the particular circumstances of the request, the student, and the school. The IDEA does not similarly limit schools' responsibilities.[268]

By not requiring "fundamental alterations," Section 504 and the ADA allow schools to "preserv[e] the essential characteristics of their . . . programs."[269] Courts have found that requiring a school to "lower or effect substantial modifications of standards"[270] or "provide new programs or new curricula,"[271] for example, would constitute fundamental alterations.

The "undue burden" limitation protects schools from incurring excessive costs. Schools need not provide accommodations or auxiliary aids and services that impose "significant difficulty or expense" in light of their overall financial and administrative resources.[272]

Reasonable Accommodations, Modifications, and Auxiliary Aids and Services: Key Takeaways

- Section 504 and the ADA require covered schools to make reasonable modifications and provide auxiliary aids and services when necessary to provide nondiscriminatory access to people with disabilities. This mandate applies to all of a school's programs, activities, and services, inside and outside of the classroom.
- Reasonable modifications and auxiliary aids and services may overlap with special education and related services under the IDEA, but unlike IDEA services they do not have to be tied to instruction.
- Schools do not have to provide modifications or auxiliary aids or services that they show would fundamentally alter a program or constitute an undue burden. These defenses are not available under the IDEA.

Other Protections

As discussed above, a fundamental difference between the IDEA and Section 504 and the ADA is that Section 504 and the ADA are general antidiscrimination laws, while the IDEA funds public

[266] 28 C.F.R. § 35.150(a)(3) (Title II); *accord* 42 U.S.C. § 12182(b)(2)(A)(ii)–(iii) (Title III); 28 C.F.R. § 35.130(b)(7)(i) (reasonable modifications under Title II); *id.* § 35.164 (effective communication under Title II); *id.* § 36.302(a) (reasonable modifications under Title III); *id.* §§ 36.303(a), 36.309(b)(3), (c)(3) (auxiliary aids and services under Title III); *see* Alexander v. Choate, 469 U.S. 287, 300 (1985) (holding under Section 504 that "a grantee need not be required to make 'fundamental' or 'substantial' modifications to accommodate the handicapped").

[267] *E.g.*, 28 C.F.R. § 35.150(a)(3) ("In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance . . . would result in such alteration or burdens."); *id.* § 35.164 (same); Timothy H. v. Cedar Rapids Cmty. Sch. Dist., 178 F.3d 968, 971 (8th Cir. 1999); K.N. v. Gloucester City Bd. of Educ., 379 F. Supp. 3d 334, 354 (D.N.J. 2019).

[268] *See* K.M. *ex rel.* Bright v. Tustin Unified Sch. Dist., 725 F.3d 1088, 1101 (9th Cir. 2013). The Supreme Court has contemplated that "the potential financial burdens imposed on participating States may be relevant to arriving at a sensible construction of the IDEA," but it has never articulated a standard for how courts should take costs into account. Cedar Rapids Cmty. Sch. Dist. v. Garret F. *ex rel.* Charlene F., 526 U.S. 66, 78 (1999). The Court rejected an argument that the definition of "related services" in the IDEA incorporated costs. *Id.*; *see also* J.P. *ex rel.* Popson v. W. Clark Cmty. Sch., 230 F. Supp. 2d 910, 941–42 (S.D. Ind. 2002) (stating that schools cannot use costs as a reason to deny a FAPE but may "tak[e] financial concerns into consideration when formulating an IEP").

[269] Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 489 (4th Cir. 2005).

[270] Se. Cmty. Coll. v. Davis, 442 U.S. 397, 413 (1979); *see, e.g.*, A.H. by Holzmueller v. Ill. High Sch. Ass'n, 881 F.3d 587, 595 (7th Cir. 2018) (holding that state did not have to lower qualifying times for track-and-field events to enable disabled athlete to compete).

[271] *K.M.*, 725 F.3d at 1101.

[272] 28 C.F.R. § 36.104.

schools to provide services to children with disabilities.[273] Section 504 and the ADA therefore protect students from disability discrimination even when they do not need disability-related services.[274] The following sections briefly summarize illegal conduct under Section 504 and the ADA that the IDEA generally does not reach,[275] unless the prohibited acts result in violations of the IDEA's procedural requirements or the denial of a FAPE.[276]

Disparate Treatment

Disparate treatment, also referred to as intentional discrimination, occurs when a school treats a student differently from other students because of his or her disability.[277] Examples of disparate treatment include subjecting a student with a disability to harsher discipline than his or her peers receive, refusing to let a student with disabilities participate in the same activities as other students, or giving less class time to students with disabilities.[278] To be illegal, disparate treatment

[273] *See supra* "Laws Protecting Students with Disabilities"; *see also* Ellenberg v. N.M. Mil. Inst., 478 F.3d 1262, 1274–75 (10th Cir. 2007).

[274] OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 7.

[275] *See, e.g.*, Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 165–66 (2017) (holding that the IDEA makes "relief" "available" only for the denial of a FAPE); *Ellenberg*, 478 F.3d at 1274–75, 1280–81 (observing that the IDEA only requires schools to follow certain procedural obligations and to provide a FAPE and does not reach "pure discrimination claims").

[276] For example, a school that placed a student in an unnecessarily restricted or segregated environment might violate both the IDEA (because schools must provide a FAPE in the least restrictive environment) and the ADA/Section 504 (because unnecessarily removing a student from the general education environment because of their disability could be disparate treatment). *See, e.g.*, Parent/Pro. Advoc. League v. City of Springfield, 934 F.3d 13, 27 (1st Cir. 2019) (holding that complaint related to unnecessary segregation of students with disabilities sought relief available under both the IDEA and the ADA); J.S., III by & through J.S. Jr. v. Houston Cnty. Bd. of Educ., 877 F.3d 979, 986–87 (11th Cir. 2017) (holding that isolation on the basis of disability can violate students' IEPs and the ADA); S.P. v. Knox Cnty. Bd. of Educ., 329 F. Supp. 3d 584, 590–91 (E.D. Tenn. 2018) ("[T]he same conduct might violate all three statutes . . . ."), *modified on reconsideration sub nom.* S.P., next friend M.P. v. Knox Cnty. Bd. of Educ., No. 3:17-CV-100, 2021 WL 6338399 (E.D. Tenn. Mar. 26, 2021).

[277] *See* 42 U.S.C. § 12182(a)(b)(1)(A)–(C) (Title III); 28 C.F.R. § 35.130(b)(1)–(2) (Title II); 34 C.F.R. § 104.4(b)(1), (3) (2023) (Section 504); Lebron v. Commonwealth of Puerto Rico, 770 F.3d 25, 31 (1st Cir. 2014) ("To state a claim for intentional discrimination under either statute, the parents need have pleaded that the Commonwealth engaged in some wrongful action because of the child's disability."); CG v. Pa. Dep't of Educ., 734 F.3d 229, 236 (3d Cir. 2013) ("Plaintiffs must show that they have been deprived of a benefit or opportunity provided to non-disabled students or a group of students with some other category of disability, because of their disability."); *see also* Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021) (stating that "disparate treatment" is a form of disability discrimination); A.H. by Holzmueller v. Ill. High Sch. Ass'n, 881 F.3d 587, 592–93 (7th Cir. 2018) (stating that discrimination under Section 504 and the ADA can be established by showing that "the defendant intentionally acted on the basis of the disability"); Washington v. Ind. High Sch. Athletic Ass'n, Inc., 181 F.3d 840, 847 (7th Cir. 1999) (same).

[278] *See, e.g.*, Gohl v. Livonia Pub. Sch. Sch. Dist., 836 F.3d 672, 683 (6th Cir. 2016) (holding that a student's discrimination claim based on alleged abuse failed because he could not show students without disabilities were treated better); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 35–36; U.S. DEP'T OF EDUC., OFF. FOR CIV. RIGHTS, PROTECTING RIGHTS, ADVANCING EQUITY: REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION 37 (2015), https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2013-14.pdf; *see also* Est. of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 993 (5th Cir. 2014) (holding that students can bring ADA and Section 504 claims based on the denial of a benefit provided to students without disabilities); United States v. Georgia, 461 F. Supp. 3d 1315, 1325 (N.D. Ga. 2020) (allowing claims to proceed based on "systematic discriminatory practices which result in unlawful stigmatization, deprivation of advantages that come from integrated learning environments, denial of access to public institutions, and unjustified segregation and discrimination").

need not be motivated by ill will. Section 504 and the ADA prohibit discrimination grounded in stereotypes or paternalistic motivations as much as discrimination based on malice.[279]

Schools do not have to allow students with disabilities to participate in programs when their participation creates a "direct threat to the health or safety of others."[280] A "direct threat" is "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services."[281] A school can, for example, exclude a student with a disability from an athletic team if there is no reasonable modification that would allow the student to safely participate.[282] The school's decision must be based on an "individualized assessment" and "objective evidence" rather than "stereotypes or generalizations about the effects of a disability."[283] The school bears the burden of proving direct threat.[284]

Disparate Impact

Disparate impact, or unintentional, discrimination occurs when a school policy is facially neutral—that is, it does not overtly discriminate on the basis of disability—but it disadvantages people with disabilities.[285] Title III of the ADA recognizes disparate impact claims in the statutory text.[286] Whether Section 504 and Title II prohibit disparate impact discrimination is unsettled. The

[279] *See* Knapp v. Nw. Univ., 101 F.3d 473, 485–86 (7th Cir. 1996) (stating that the decision to exclude a disabled athlete from a school team must be made with "significant medical support" and "cannot rest on paternalistic concerns"); *see also, e.g.*, Sunlight of Spirit House, Inc. v. Borough of N. Wales, No. 16-CV-909, 2019 WL 233883, at *11 (E.D. Pa. Jan. 15, 2019) (observing in a case brought under the ADA and Fair Housing Act that a discriminatory motive can be "benign or paternalistic"); Fortenberry v. City of Wiggins, No. 1:16CV320-LG-RHW, 2018 WL 8809236, at *6 & n.5 (S.D. Miss. Feb. 5, 2018) (same, in a case brought under the ADA, Section 504, and Fair Housing Act, where the court applied identical standards under each law for discriminatory intent).

[280] 42 U.S.C. § 12182(b)(3) (ADA Title III); *accord* 28 C.F.R. § 35.139(a) (ADA Title II regulation); 28 C.F.R. § 36.208(a) (ADA Title III regulation); Doe v. Woodford Cnty. Bd. of Educ., 213 F.3d 921, 925 (6th Cir. 2000) (recognizing concept of "direct threat" under Section 504).

[281] 42 U.S.C. § 12182(b)(3) (ADA Title III); 28 C.F.R. §§ 35.104 (ADA Title II regulation); *id.* §§ 36.104 (ADA Title III regulation); *see* Sch. Bd. of Nassau Cnty. v. Arline, 480 U.S. 273, 287–88 & n.16 (1987) (interpreting Section 504 to establish that "[a] person who poses a significant risk of communicating an infectious disease to others . . . will not be otherwise qualified . . . if reasonable accommodation will not eliminate that risk").

[282] *See Woodford Cnty. Bd. of Educ.*, 213 F.3d at 925–26 (holding school not liable for placing a student with hemophilia and hepatitis B on "hold" while evaluating whether he could safely participate on basketball team); Montalvo v. Radcliffe, 167 F.3d 873, 878–79 (4th Cir. 1999) (holding that karate school could exclude child with HIV from group classes due to risk of bloody injuries).

[283] *Montalvo*, 167 F.3d at 876–77 (quoting 28 C.F.R. § 36,208(c)). Specifically, the school is required to "make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk." 28 C.F.R. § 35.139(b); *accord, e.g.*, R.W. v. Bd. of Regents of the Univ. Sys. of Ga., 114 F. Supp. 3d 1260, 1283 (N.D. Ga. 2015).

[284] *See, e.g.*, Hernandez v. W. Texas Treasures Est. Sales, L.L.C., 79 F.4th 464, 470 (5th Cir. 2023) (determining that the ADA Title III direct threat provision is "analogous" to the ADA Title I direct threat provision, which places the burden on the employer); Hargrave v. Vermont, 340 F.3d 27, 36 (2d Cir. 2003) (holding that if direct threat applies, the defendant bears the burden); *cf.* Dadian v. Vill. of Wilmette, 269 F.3d 831, 841 (7th Cir. 2001) (holding that the defendant has the burden to prove direct threat under the Fair Housing Act based in part on analogizing to the ADA).

[285] *See* Crowder v. Kitagawa, 81 F.3d 1480, 1483–84 (9th Cir. 1996); Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021).

[286] 42 U.S.C. § 12182(b)(1)(D)(i) ("An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability."); *id.* § 12182(b)(2)(a)(i) ("Discrimination includes the imposition or application of eligibility (continued...)

availability of such claims dates back to the Supreme Court's decision in the seminal Section 504 case *Alexander v. Choate*, in which the Court observed, "Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect."[287] Following *Choate*, courts frequently held that Section 504 and the ADA prohibited not only intentional, but also unintentional discrimination.[288] The text of Title II of the ADA and Section 504 do not specifically refer to disparate impacts, but DOJ and ED's regulations take the position that plaintiffs can bring disparate impact suits.[289]

Courts have questioned whether Title II and Section 504 in fact prohibit disparate impact discrimination. In 2001, in *Alexander v. Sandoval*, the Supreme Court decided that Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits racial discrimination by recipients of federal funding, does not allow plaintiffs to bring disparate impact claims.[290] Congress modeled Section 504 after Title VI,[291] and Title II after Section 504.[292] Following *Sandoval*, federal courts have split on whether Section 504 allows plaintiffs to sue for disparate impacts.[293] The resolution of this question with regard to Section 504 may determine whether disparate impact claims may proceed under Title II, although some courts have distinguished the two laws.[294]

When disparate impact liability applies, not all policies that adversely impact people with disabilities are illegal. If a student shows that a policy has a negative effect on students with disabilities, the school can still implement the policy if it shows that it is necessary to accomplish the school's legitimate objectives.[295]

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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.").

[287] 469 U.S. 287, 295 (1985).

[288] *E.g.*, *Payan*, 11 F.4th at 736–37; A.H. by Holzmueller v. Ill. High Sch. Ass'n, 881 F.3d 587, 592–93 (7th Cir. 2018); Davis v. Shah, 821 F.3d 231, 260 (2d Cir. 2016); J.V. v. Albuquerque Pub. Sch., 813 F.3d 1289, 1295 (10th Cir. 2016).

[289] "A public entity may not . . . utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or that perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State." 28 C.F.R. § 35.130(b)(3) (2023) (Title II); *accord* 34 C.F.R. § 104.4(b)(4) (2023) (Section 504). "A public entity 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 service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." 28 C.F.R. § 35.130(b)(8) (Title II).

[290] 532 U.S. 275 (2001).

[291] *E.g.*, Doe v. BlueCross BlueShield of Tenn., Inc., 926 F.3d 235, 242 (6th Cir. 2019); *Payan*, 11 F.4th at 735.

[292] 42 U.S.C. § 12133 (stating that the "remedies, procedures, and rights set forth" in Section 504 "shall be the remedies, procedures, and rights" provided under Title II).

[293] *Compare Payan*, 11 F.4th at 737 ("We hold that *Sandoval* does not disturb *Choate* and *Crowder*, and disparate impact disability discrimination claims remain enforceable through a private right of action."), *with Doe*, 926 F.3d at 241 (relying in part on *Sandoval* to conclude that Section 504 "does not prohibit disparate-impact discrimination").

[294] *Compare* Doe 1 v. Perkiomen Valley Sch. Dist., 585 F. Supp. 3d 668, 688 n.43 (E.D. Pa. 2022) ("There is reason not to extend *Sandoval*'s analysis to the ADA."), *and* Nicholas v. Fulton Cnty. Sch. Dist., No. 1:20-CV-3688-MLB, 2022 WL 2276900, at *19 (N.D. Ga. June 23, 2022) (holding that Title II covers disparate impact claims but Section 504 does not), *with Payan*, 11 F.4th at 740 (Lee, J., dissenting) (opining that both Section 504 and Title II do not cover disparate impact discrimination), *and* Palladeno v. Mohr, No. 20-3587, 2021 WL 4145579, at *4 (6th Cir. Sept. 13, 2021) (recognizing only intentional discrimination and failure-to-accommodate claims under Title II).

[295] 42 U.S.C. § 12182(b)(2)(a)(i); 28 C.F.R. § 35.130(b)(8).

Harassment

A school's inadequate response to disability-based harassment may constitute a distinct type of intentional discrimination claim.[296] Although they tend to allow such claims to proceed, federal courts have not conclusively resolved whether Section 504 and the ADA prohibit disability-based harassment or, if they do, what standard applies.[297] Several courts, along with ED, recognize that disability-based harassment, including slurs, taunts, bullying, assaults, and other forms of mistreatment by either students or school officials, can lead to a Section 504 or ADA violation when it is severe enough to create a hostile educational environment, that is, when it actually impedes a student's access to a school's programs or services.[298] These courts generally hold that school districts are legally responsible for disability harassment when they know of the harassment and their actions in response, or failures to act, are "clearly unreasonable"—in other words, when schools exhibit "deliberate indifference."[299]

Retaliation and Interference

Section 504 and the ADA prohibit retaliation against individuals because of their participation in any Section 504 or ADA investigation, proceeding, or hearing.[300] The laws also prohibit people from interfering with another's exercise of his or her ADA or Section 504 rights.[301] Courts tend to

[296] *Cf.* Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 643 (1999) (holding that a school's deliberate indifference to peer-on-peer sexual harassment constitutes intentional sex discrimination under Title IX); Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 934 (10th Cir. 2003) (holding that a school's deliberate indifference to peer-on-peer racial harassment constitutes intentional discrimination under Title VI).

[297] *See*, *e.g.*, Newell v. Cent. Mich. Univ. Bd. of Trustees, No. 20-1864, 2021 WL 3929220, at *10 (6th Cir. Sept. 2, 2021) (assuming without deciding that plaintiffs can apply the framework for sexual harassment in educational programs to disability harassment under the Rehabilitation Act and ADA); McIntyre v. Eugene Sch. Dist. 4J, 976 F.3d 902, 916 (9th Cir. 2020) (assuming without deciding that students can bring disability harassment claims).

[298] *E.g.*, Est. of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 996 (5th Cir. 2014); Wright v. Carroll Cnty. Bd. of Educ., No. 11-CV-3103, 2013 WL 4525309, at *16 (D. Md. Aug. 26, 2013) (collecting cases); K.M. *ex rel.* D.G. v. Hyde Park Cent. Sch. Dist., 381 F. Supp. 2d 343, 360–61 (S.D.N.Y. 2005); OCR SECTION 504 RESOURCE GUIDE, *supra* note 23, at 32; *see also Davis*, 526 U.S. at 650–52 (describing the standard for actionable sexual harassment, which cases including *Lance* and *Wright* have applied in the disability context); M.P. *ex rel.* K. & D.P. v. Indep. Sch. Dist. No. 721, 439 F.3d 865, 868 (8th Cir. 2006) (recognizing distinction between disability harassment and IDEA claims).

[299] *E.g.*, *Davis*, 526 U.S. at 647–48; *Est. of Lance*, 743 F.3d at 996 (applying *Davis* to Section 504); *Wright*, 2013 WL 4525309, at *16–18 (same).

[300] 42 U.S.C. § 12203(a) ("No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter."); 34 C.F.R. § 104.61 (2023) (applying the "procedural provisions" of Title VI, including its anti-retaliation provision, to Section 504 claims); *see* 34 C.F.R. § 100.7(e) (Title VI anti-retaliation provision) ("No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual . . . because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.").

[301] 42 U.S.C. § 12203(b) ("It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter."); 34 C.F.R. § 104.61; *see* 34 C.F.R. § 100.7(e) ("No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part . . . .").

apply the same analysis for these claims under Section 504 and the ADA.[302] Courts have disagreed as to whether the IDEA prohibits retaliation or interference.[303]

Many, though not all, courts consider retaliation and interference claims to require the same elements.[304] To prove a claim, a plaintiff must show that the defendant took adverse action against him or her because he or she engaged in protected activity.[305] Protected activity includes exercising Section 504 or ADA rights; advocating for students' Section 504 or ADA rights; opposing Section 504 or ADA violations; and initiating or participating in Section 504 or ADA proceedings.[306] An adverse action is one that would deter a reasonable person from engaging in the protected activity.[307]

The ADA and Section 504 anti-retaliation and interference provisions protect everyone—a person need not have a disability to bring a claim.[308] For example, a student who gave a statement to OCR about disability discrimination experienced by a friend, or a teacher who encouraged a school to provide accommodations, could bring a claim if they experienced an adverse action as a result.[309] A person can bring a retaliation or interference claim even if the underlying disability discrimination claim fails.[310] For example, if a school retaliates against a student for requesting accommodations, that student may have a claim even if a court finds he or she was not entitled to accommodations.

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[302] *E.g.*, D.B. *ex rel.* Elizabeth B. v. Esposito, 675 F.3d 26, 41 (1st Cir. 2012) ("The standard for retaliation claims under the Rehabilitation Act is the same as the standard under the ADA."); P.N. v. Greco, 282 F. Supp. 2d 221, 243 (D.N.J. 2003) (same).

[303] *E.g.*, Pangerl v. Peoria Unified Sch. Dist., No. CV-15-02189-PHX-ROS, 2018 WL 9708471, at *6 (D. Ariz. Sept. 28, 2018) (recognizing IDEA retaliation claim), *aff'd in part, rev'd in part and remanded on other grounds*, 806 F. App'x 553 (9th Cir. 2020); Sch. Dist. of Phila. v. Post, 262 F. Supp. 3d 178, 199 n.2 (E.D. Pa. 2017) (recognizing disagreement); Garcia v. Capistrano Unified Sch. Dist., No. SACV162111DOCJCGX, 2017 WL 10543661, at *16 (C.D. Cal. May 1, 2017) ("[T]he IDEA does not contain an 'interference' cause of action."); Collins v. City of New York, 156 F. Supp. 3d 448, 457 (S.D.N.Y. 2016) (determining that the IDEA does not prohibit retaliation). The IDEA does define denying a FAPE to include when a school district "significantly impeded" a parent's ability to "participate in the decisionmaking process" regarding his or her child. 20 U.S.C. § 1415(f)(3)(E)(ii)(II).

[304] Stewart v. Ross, No. 116CV213LMBJFA, 2020 WL 1907471, at *17 & n.21 (E.D. Va. Apr. 17, 2020) (collecting cases), *aff'd*, 833 F. App'x 995 (4th Cir. 2021). *Contra* Everett H. v. Dry Creek Joint Elementary Sch. Dist., 5 F. Supp. 3d 1167, 1180 (E.D. Cal. 2014) ("An interference action . . . has a broader scope than retaliation since interference does not necessarily concern discrimination or retaliation for engaging in a protected activity. . . . In addition, unlike discrimination, interference claimants only have to establish that they were denied a benefit and need not demonstrate any causal nexus.").

[305] *E.g.*, Albright as Next Friend of Doe v. Mountain Home Sch. Dist., 926 F.3d 942, 953 (8th Cir. 2019); Lauren W. *ex rel.* Jean W. v. DeFlaminis, 480 F.3d 259, 267 (3d Cir. 2007); Derrick F. v. Red Lion Area Sch. Dist., 586 F. Supp. 2d 282, 300 (M.D. Pa. 2008).

[306] *D.B.* ex rel. *Elizabeth B.*, 675 F.3d at 41; Bradley *ex rel.* Bradley v. Ark. Dep't of Educ., 443 F.3d 965, 976 (8th Cir. 2006); Knaub v. Tulli, 788 F. Supp. 2d 349, 359 (M.D. Pa. 2011).

[307] E.g., *D.B.* ex rel. *Elizabeth B.*, 675 F.3d at 41; *Lauren W.* ex rel. *Jean W.*, 480 F.3d at 267; *Derrick F.*, 586 F. Supp. 2d at 300; *P.N.*, 282 F. Supp. 2d at 242.

[308] Rhoads v. FDIC, 257 F.3d 373, 391 (4th Cir. 2001); Weber v. Cranston Sch. Comm., 212 F.3d 41, 48 (1st Cir. 2000) (collecting cases); Round Rock Indep. Sch. Dist. v. Amy M., 540 F. Supp. 3d 679, 697 (W.D. Tex. 2021).

[309] *See Knaub*, 788 F. Supp. 2d at 353, 359 (teacher brought claim based on retaliation for her role as an advocate at a friend's child's IEP meeting); *P.N.*, 282 F. Supp. 2d at 242 (parents brought claim based on retaliation for advocacy for their child "and other similarly situated students").

[310] *E.g.*, *D.B.* ex rel. *Elizabeth B.*, 675 F.3d at 40–41.

Other Rights: Key Takeaways

- As general antidiscrimination laws, Section 504 and the ADA confer rights beyond the right to disability-related services.
- Section 504 and the ADA prohibit disparate treatment, i.e., intentional discrimination on the basis of disability.
- The law is unsettled regarding whether Section 504 and/or Title II of the ADA prohibit disparate impact, that is, facially neutral policies that have unintentional adverse effects on people with disabilities. Title III of the ADA does prohibit disparate impact discrimination.
- Courts tend to recognize a cause of action under Section 504 and the ADA for disability-based harassment when a school's reaction to such harassment is clearly unreasonable in light of the known circumstances, i.e., deliberately indifferent.
- Section 504 and the ADA prohibit retaliation and interference, protecting people who advocate for or exercise rights under these laws. Whether the IDEA prohibits retaliation is unsettled.

Enforcement and Remedies

Students with disabilities and their families can pursue legal relief for violations of their IDEA, Section 504, and ADA rights. However, they may have to go through different pathways to obtain that relief, and the available remedies differ under each law.

Enforcement and Remedies Under the IDEA

Children with disabilities who believe their schools have violated their IDEA rights must follow the IDEA's formal administrative procedures to seek relief.[311] Generally, a child with a disability starts by filing a complaint with the LEA, with notice to the SEA.[312] The parties must meet to attempt to resolve the complaint,[313] and they have the option of pursuing formal mediation at the state's expense.[314] If they cannot reach an agreement, they proceed to an administrative due process hearing.[315] The hearing may be conducted by the LEA or the SEA.[316] If the hearing was conducted by the LEA, any party dissatisfied with the outcome can appeal to the SEA.[317] Parties may take their cases to court only after completing the administrative process,[318] with rare exceptions.[319]

[311] *E.g.*, K.I. v. Durham Pub. Sch. Bd. of Educ., 54 F.4th 779, 788 (4th Cir. 2022); Muskrat v. Deer Creek Pub. Sch., 715 F.3d 775, 783 (10th Cir. 2013); *see* 20 U.S.C. § 1415; Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 159 (2017) (summarizing the IDEA's administrative procedures). States have some power to modify these procedures. *See* 20 U.S.C. § 1415(b)(6)(B), (f)(3)(C), (i)(2)(B) (allowing states to set their own statutes of limitations); *id.* § 1415(e)(2)(B) (allowing SEAs and LEAs to implement additional alternative dispute resolution options); *id.* § 1415(f)(1)(A) (allowing states to determine whether LEAs or SEAs conduct due process hearings).

[312] 20 U.S.C. § 1415(b)(6), (7); *see id.* § 1415(c)(2).

[313] *Id.* § 1415(f)(1)(B).

[314] *Id.* § 1415(e).

[315] *Id.* § 1415(f)(1)(B)(ii); *see id.* § 1415(f)(3), (h).

[316] *Id.* § 1415(f)(1)(A).

[317] *Id.* § 1415(g).

[318] *Id.* § 1415(i)(2).

[319] *See, e.g.*, J.M. v. Francis Howell Sch. Dist., 850 F.3d 944, 950 (8th Cir. 2017) (discussing exceptions to IDEA administrative exhaustion); McQueen *ex rel.* McQueen v. Colo. Springs Sch. Dist. No. 11, 488 F.3d 868, 874–76 (10th Cir. 2007) (same); Rose v. Yeaw, 214 F.3d 206, 210–12 (1st Cir. 2000) (same).

The relief available in an IDEA proceeding depends on whether a school district violated a student or parent's *substantive* or *procedural* rights. If a hearing officer or court finds that a school district violated a student's substantive rights—that is, the school failed to provide a FAPE[320]—the officer or court can order injunctive relief and/or compensatory education.[321] Injunctive relief means a change in the school's actions. A court could order a school to revise a student's IEP, for example.[322] Compensatory education means services designed to make up for any deficits resulting from the school's failure to provide a FAPE.[323] Courts and hearing officers may order schools to reimburse parents for educational expenses they incurred to compensate for a school's failure to meet its obligations.[324]

Schools may also violate a child or parent's procedural rights, for example, by failing to timely identify a child with a disability, to properly convene the IEP team, or to provide parents with required information.[325] The same remedies are available only if procedural violations result in the denial of a FAPE.[326] In this context, the IDEA defines the denial of a FAPE to include when schools significantly interfere with parents' rights to participate in the IDEA decisionmaking process or when they deprive a child of "educational benefits."[327] If a school's procedural

[320] 20 U.S.C. § 1415(f)(3)(E)(i) ("A decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education."); *see* Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 166 (2017) (holding that the IDEA allows relief only for "the denial of a FAPE"). A school can fail to provide a FAPE in a number of ways. For example, in addition to failing to provide needed services, a school might neglect its Child Find duties, improperly evaluate a child, or fail to educate a child in the least restrictive environment, all of which could lead to the denial of a FAPE. *See* 20 U.S.C. § 1415(b)(6)(A) (allowing parents to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child").

[321] *See* 20 U.S.C. § 1415(i)(2)(C)(iii) (allowing a court to "grant such relief as the court determines is appropriate"); McIntyre v. Eugene Sch. Dist. 4J, 976 F.3d 902, 910–11 (9th Cir. 2020); Bd. of Educ. & River Forest High Sch. Dist. 200 v. Ill. State Bd. of Educ., 79 F.3d 654, 656 (7th Cir. 1996) ("This authorization encompasses the full range of equitable remedies . . . .")

[322] Winkelman *ex rel.* Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 532 (2007) (holding that parents can enforce their children's right to a FAPE); Sellers by Sellers v. Sch. Bd., 141 F.3d 524, 527 (4th Cir. 1998) ("Appropriate relief may include special education services.").

[323] *E.g.*, J.N. next friend of M.N. v. Jefferson Cnty. Bd. of Educ., 12 F.4th 1355, 1366–67 (11th Cir. 2021); Indep. Sch. Dist. No. 283 v. E.M.D.H., 960 F.3d 1073, 1084 (8th Cir. 2020); S.S. v. Bd. of Educ., 498 F. Supp. 3d 761, 770 (D. Md. 2020).

[324] Luna Perez v. Sturgis Pub. Sch., 143 S. Ct. 859, 864 (2023) (explaining that courts may "grant as an available remedy the reimbursement of past educational expenses" (citation and alteration omitted)); s*ee, e.g.*, Sch. Comm. of Town of Burlington v. Dep't of Educ., 471 U.S. 359, 369–71 (1985) (holding that schools may have to reimburse parents for private school placements and that "reimbursement merely requires the Town to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP"); Nieves-Marquez v. Puerto Rico, 353 F.3d 108, 124 (1st Cir. 2003); *Sellers by Sellers*, 141 F.3d at 527.

[325] *See, e.g.*, Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982) (identifying the "full participation of concerned parties throughout the development of the IEP" as an important procedural requirement); *J.N.*, 12 F.4th at 1365 ("A child-find violation . . . is a procedural matter."); Amanda J. *ex rel.* Annette J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 891 (9th Cir. 2001) (describing parents' procedural rights).

[326] *See* 20 U.S.C. § 1415(f)(3)(E) (instructing hearing officers to make decisions on "substantive grounds based on a determination of whether the child received a [FAPE]" and detailing when procedural violations result in the denial of a FAPE); *J.N.*, 12 F.4th at 1366 ("A plaintiff is entitled to substantive relief based on a procedural violation of the Act only when that violation causes a substantive harm."); L.O. v. N.Y. City Dep't of Educ., 822 F.3d 95, 124–25 (2d Cir. 2016) (directing district court to use its "broad discretion" to determine relief for procedural violations resulting in the denial of a FAPE); C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66 (3d Cir. 2010) ("In some cases, a procedural violation may rise to the level of a denial of a FAPE, entitling the plaintiff to compensatory education or tuition reimbursement.").

[327] 20 U.S.C. § 1415(f)(3)(E)(ii); Crofts v. Issaquah Sch. Dist. No. 411, 22 F.4th 1048, 1054 (9th Cir. 2022); A.A. v. Northside Indep. Sch. Dist., 951 F.3d 678, 685 (5th Cir. 2020).

violations did not result in the denial of a FAPE, a hearing officer or court can only order the school to correct its procedural deficits.[328] The decisionmaker cannot order changes to a student's IEP, compensatory education, reimbursement for educational expenses, or other substantive remedies.[329]

The IDEA allows a court to award a parent who is the "prevailing party" reasonable reimbursement for attorneys' fees.[330] To be the "prevailing party," a parent must obtain relief that alters the legal relationship between the parties and provides some benefit to the child.[331] Several courts have denied prevailing party status and attorneys' fees to families succeeding on only procedural claims without obtaining substantive relief.[332]

No matter the nature of the violation, students and parents can never receive compensatory damages for an IDEA claim.[333] That is, they may not be reimbursed for expenses (other than educational expenditures and attorneys' fees), lost income, or pain and suffering caused by an IDEA violation.[334]

Enforcement and Remedies Under Section 504 and the ADA

In the context of *postsecondary* and *private* P–12 education, complainants raising Section 504 and/or ADA claims do not have to complete an administrative process before going to court. They may immediately bring a lawsuit if they believe their rights have been violated.[335] Section 504 complainants may, but do not have to, file complaints with the federal agency funding the alleged violator; in the education context, that will usually be ED.[336] ADA Title II complainants may file complaints with DOJ or the appropriate federal agency, as designated by DOJ regulation; again,

[328] 20 U.S.C. § 1415(f)(3)(E)(iii) ("Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.").

[329] *J.N.*, 12 F.4th at 1366 ("The remedy for a procedural failing is generally to require that the procedure be followed."); *C.H.*, 606 F.3d at 66 ("A plaintiff alleging only that a school district has failed to comply with a procedural requirement of the IDEA, independent of any resulting deprivation of a FAPE, may only seek injunctive relief for prospective compliance.").

[330] 20 U.S.C. §§ 1415(i)(B)–(G). A court may award attorneys' fees to an LEA or SEA only when the parent or parent's attorney engages in certain misconduct. *Id.*

[331] *See, e.g.*, *J.N.*, 12 F.4th at 1368; Salley v. St. Tammany Par. Sch. Bd., 57 F.3d 458, 468 (5th Cir. 1995); Doe v. Belchertown Pub. Sch., 347 F. Supp. 3d 90, 104 (D. Mass. 2018).

[332] *E.g.*, *J.N.*, 12 F.4th at 1368; *Salley*, 57 F.3d at 468; *Doe*, 347 F. Supp. 3d at 104.

[333] *See* Luna Perez v. Sturgis Pub. Sch., 143 S. Ct. 859, 864 (2023); Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 255 (2009) (stating that the "statute[] at issue in . . . *Smith* [*v. Robinson*, 468 U.S. 992 (1984)]"—i.e., the Education of the Handicapped Act, the predecessor to the IDEA—"did not allow for damages").

[334] *E.g.*, Blanchard v. Morton Sch. Dist., 509 F.3d 934, 936–38 (9th Cir. 2007); Sellers by Sellers v. Sch. Bd., 141 F.3d 524, 527–28 (4th Cir. 1998); Fort Zumwalt Sch. Dist. v. Clynes, 119 F.3d 607, 615 (8th Cir. 1997).

[335] *See* 28 C.F.R. § 35.172(d) (2023) (Title II); *id.* § 36.501(a) (Title III); *see generally Luna Perez*, 143 S. Ct. 859 (discussing when plaintiffs need not exhaust ADA claims against schools); Fry v. Napoleon Cmty. Sch., 580 U.S. 154 (2017) (same, with regard to both ADA and Section 504 claims).

[336] *See* 29 U.S.C. § 794a(a)(2) (providing that victims of discrimination under Section 504 shall have access to the same remedies and procedures available under Title VI); 42 U.S.C. § 2000d-1 (allowing each federal agency to adopt its own regulations to ensure compliance with Title VI and allowing compliance to be "effected" by termination of federal funding or "by any other means authorized by law"); 28 C.F.R. § 41.5 (requiring federal agencies to establish Section 504 enforcement systems for funding recipients); 34 C.F.R. § 104.61 (2023) (ED regulation adopting the procedural provisions applicable to Title VI); *id.* § 100.7 (setting forth the process for ED's Title VI complaints and investigations).

in the education context, that will likely be ED.[337] ADA Title III complainants may file complaints with DOJ.[338]

Private enforcement of Section 504 and the ADA in the *public elementary* and *secondary* education contexts is more involved. Students can still file complaints with the federal agencies as discussed above. ED also requires public elementary and secondary schools to maintain due process procedures for handling Section 504 complaints; schools may, but do not have to, use the IDEA complaint process to fulfill this obligation.[339] However, unique to the elementary and secondary education contexts (as opposed to other kinds of disability discrimination claims), individuals who seek to vindicate their rights in court may have to complete the IDEA's administrative process first, even if they do not intend to bring an IDEA claim.

The IDEA provides that children with disabilities retain all of their rights under the ADA, Section 504, and other federal laws, except that before they can file a lawsuit "seeking relief that is also available under [the IDEA]," they must go through the IDEA's administrative process "to the same extent as would be required" had they brought an IDEA claim.[340] The Supreme Court has articulated two principles governing when a person "seeks relief" available under the IDEA and therefore must use the IDEA's administrative process. First, when ADA or Section 504 complainants argue, in essence, that their schools denied a FAPE, even if they do not frame their complaints that way, they are seeking relief available under the IDEA.[341] Students bringing other kinds of Section 504 or ADA claims against their schools, such as that a school has not provided an accessible entrance to the building, may proceed straight to court.[342] Second, complainants do not seek relief available under the IDEA when they ask for remedies that the IDEA cannot provide.[343] This situation arises when complainants seek compensatory damages, which, as discussed above, are not available under the IDEA.[344]

Whether damages are available under the ADA or Section 504 is complicated. Title III of the ADA does not provide for any damages.[345] In 2022, the Supreme Court held that plaintiffs cannot receive damages for emotional distress under Section 504.[346] As Title II of the ADA borrows "remedies, procedures, and rights" from Section 504, courts increasingly hold that emotional distress damages are also unavailable under Title II.[347] Courts may be able to award ADA Title II and Section 504 plaintiffs other damages, however, such as compensation for lost income or

[337] 28 C.F.R. §§ 35.170(c), 35.190.

[338] 42 U.S.C. § 12188(b) (authorizing the Attorney General to investigate and take enforcement actions to remedy Title III violations); 28 C.F.R. § 36.502(b) (allowing individuals to request DOJ investigations of alleged Title III violations).

[339] 34 C.F.R. § 104.36.

[340] 20 U.S.C. § 1415(*l*).

[341] Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 166, 169–70 (2017).

[342] *Id.* at 168, 171–72.

[343] Luna Perez v. Sturgis Pub. Sch., 143 S. Ct. 859, 863–64 (2023).

[344] *Id.*

[345] Title III of the ADA borrows the remedies available under Title II of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, or national origin by public accommodations. 42 U.S.C. § 12188(a)(1). Title II of the Civil Rights Act allows for only injunctive relief. 42 U.S.C. § 2000a–3(a).

[346] Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562, 1571–72 (2022).

[347] *E.g.*, Kovatsenko v. Ky. Cmty. & Tech. Coll., No. CV 5:23-066-DCR, 2023 WL 3346108, at *4 (E.D. Ky. May 10, 2023); A.T. v. Oley Valley Sch. Dist., No. CV 17-4983, 2023 WL 1453143, at *4 (E.D. Pa. Feb. 1, 2023); Pennington v. Flora Cmty. Unit Sch. Dist. No. 35, No. 3:20-CV-11-MAB, 2023 WL 348320, at *2 (S.D. Ill. Jan. 20, 2023).

medical bills or other financial harms.[348] Finally, to the extent any damages are available under Title II and Section 504, most courts hold that plaintiffs must prove that a school did more than discriminate—they must show that the school acted with at least "deliberate indifference," or potentially "gross misjudgment," "bad faith," or "animus."[349]

As under the IDEA, successful plaintiffs in Section 504 and ADA actions can also receive injunctive relief and attorneys' fees.[350]

Enforcement and Remedies: Key Takeaways

- Families seeking to enforce their IDEA rights must complete the IDEA's administrative process before going to court. Successful complainants can receive injunctive relief, compensatory education, and attorneys' fees for the denial of a FAPE. If a complainant proves only a procedural violation, a court can issue an order to the school district to correct the violation. Compensatory damages are not available under the IDEA.
- Students raising Section 504 and/or ADA claims against postsecondary or private schools do not have to go through an administrative process before filing suit in court. Primary and secondary school students in public schools raising such claims must exhaust the IDEA's administrative process if they seek relief that is also available under the IDEA, i.e., when they seek injunctive relief and/or compensatory education for the denial of a FAPE.
- Successful plaintiffs can receive only injunctive relief and attorneys' fees under Title III of the ADA. To grant any damages under Section 504 or Title II, most courts require plaintiffs to prove intentional discrimination. Otherwise, only injunctive relief and attorneys' fees are available. Whether plaintiffs can receive emotional distress damages for Section 504 or Title II violations is unsettled, but courts increasingly hold they cannot.

[348] *See A.T.*, 2023 WL 1453143, at *4 ("Although *Cummings* bars claims for compensatory emotional damages under Section 504 of the RA, Title IX and the ADA, there is nothing in the decision that bars a plaintiff from seeking other forms of compensatory damages under these three statutes."); *Pennington*, 2023 WL 348320, at *2 (holding that *Cummings* "did not preclude" "compensatory damages for economic losses"); Montgomery v. District of Columbia, No. CV 18-1928 (JDB), 2022 WL 1618741, at *24–27 (D.D.C. May 23, 2022) (holding that plaintiffs can recover damages under Title II and Section 504 to the extent those damages "fit within categories of damages that would be traditionally recoverable in a breach of contract case"); *see also* Chaney v. E. Cent. Indep. Sch. Dist., No. SA-21-CV-01082-FB, 2022 WL 17574080, at *6 (W.D. Tex. Dec. 9, 2022) (acknowledging lack of clarity on whether plaintiff pled damages for injuries other than emotional distress without ruling on availability of such damages).

[349] *See supra* note 233 and accompanying text; *see also, e.g.*, Shaw v. Kemper, 52 F.4th 331, 334 (7th Cir. 2022) ("To recover damages, Shaw must identify intentional conduct (and not mere negligence) by a named defendant. We have interpreted that obligation as one requiring Shaw to plausibly allege that the defendants acted with deliberate indifference to rights conferred by the ADA and Rehabilitation Act." (citation omitted)); Bax v. Drs. Med. Ctr. of Modesto, Inc., 52 F.4th 858, 866 (9th Cir. 2022) ("Where, as here, plaintiffs seek compensatory damages under Section 504, they must clear an additional hurdle: proving a *mens rea* of intentional discrimination which may be met by showing deliberate indifference." (alteration and citations omitted)); Koon v. North Carolina, 50 F.4th 398, 404 (4th Cir. 2022) ("As to the circuit split, courts largely agree that compensatory damages are only available to ADA plaintiffs who prove intentional discrimination, but there is a disagreement about what standard to use: deliberate indifference or something more.").

[350] 29 U.S.C. § 794a(b) (allowing attorneys' fees under Section 504); 42 U.S.C. § 12205 (allowing attorneys' fees under the ADA); Fry v. Napoleon Cmty. Sch., 580 U.S. 154, 160 (2017) (stating that injunctive relief is available under both the ADA and Section 504).

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

	Individuals with Disabilities Education Act, Part B (IDEA)	Section 504 of the Rehabilitation Act (Section 504)	Americans with Disabilities Act (ADA)
Nature of Law			
	Authorizes grants to state and local educational agencies (SEAs and LEAs) to ensure a free appropriate public education (FAPE) to children with disabilities.	Prohibits disability discrimination in federally funded programs and activities and in programs and activities conducted by the executive branch.	Prohibits disability discrimination in a variety of areas of public life.
Scope of Coverage in Education Context			
	All public school districts in states that take IDEA funding (which is all states). Can require public school districts to serve students in private schools. Does not cover postsecondary schools.	All schools, at all education levels, that receive federal funding, which includes all public schools. Also covers federally funded educational programs in non-school settings (such as prison classes, vocational programs, etc.). Federal funding includes federal student financial aid.	*Title II*: All public schools, including postsecondary. Also covers any public education program in a non-school setting. *Title III*: All nonparochial private schools, including postsecondary. Also covers all education programs in non-school settings.
Age Range			
	Ages 3 through 21 or until high school graduation, whichever comes first.[a]	No age limit.	No age limit.
Determination of Eligibility: Definitions and Evaluations			
Definition of disability	Uses a categorical definition of disability. Children must (1) have at least one disability within the categories listed in the IDEA or its regulations and (2) require special education and related services because of their disability.	Person must have a physical or mental impairment that substantially limits one or more major life activities, have a history of such an impairment, or be regarded as disabled. Disability need not be connected to ability to learn.	Same as Section 504.
"Child Find" or Identifying Eligible Children with Disabilities	SEA or LEA must have a process to identify all children eligible for IDEA services residing in the state (and children attending private school in the state even if residing out-of-state).	*Public P–12*: Covered entity must have a process to identify every eligible student within its jurisdiction. *Private P–12 & postsecondary*: No obligation to proactively identify eligible students, but must respond to requests for accommodation and offer accommodations even absent a request when need is obvious.	No obligation to proactively identify eligible students, but must respond to requests for accommodation and offer accommodations even absent a request when need is obvious.
Evaluation	Requires evaluation prior to initiating IDEA services. Extensive provisions regulating how to conduct evaluations.	*P–12:* Requires evaluations before initiating special education services, but may be able to provide other services without evaluation. Provisions regarding conduct of evaluations are	Schools are not required to conduct disability evaluations.

	Individuals with Disabilities Education Act, Part B (IDEA)	Section 504 of the Rehabilitation Act (Section 504)	Americans with Disabilities Act (ADA)
		similar, but not identical, to those in the IDEA. *Postsecondary*: Schools are not required to conduct disability evaluations.	
Placements			
	Students must be placed in the least restrictive environment (LRE) appropriate to their needs. Integrated placements are required for academic and nonacademic activities. School districts must maintain a continuum of alternative placements to ensure a FAPE for all eligible students. Regulations include specific directions on who makes placement decisions and how they are made. Children may be placed in private schools by a school district if needed to provide a FAPE. Parents may be entitled to reasonable reimbursement for placing children in private school without cooperation of the school district if the district does not provide a FAPE. Students are entitled to transition planning.	Does not use the term LRE but imposes similar obligations regarding educating students in the most integrated setting appropriate to their needs. Integrated placements are required for academic and nonacademic activities. Schools are not required to maintain a continuum of alternative placements. Any alternative placement for students with disabilities should provide comparable facilities, services, and activities. Regulations include specific directions, somewhat different than the IDEA's, on who makes placement decisions and how they are made. Courts are split on whether school districts are ever required to pay for private placement. No entitlement to transition planning. Requires nondiscriminatory admissions to postsecondary schools.	Does not use the term LRE but imposes similar obligations regarding educating students in the most integrated setting appropriate to their needs. Integrated placements are required for academic and nonacademic activities. Schools are not required to maintain a continuum of alternative placements. Any alternative placement for students with disabilities should provide comparable facilities, services, and activities. Courts are split on whether school districts are ever required to pay for private placement. No entitlement to transition planning. Requires nondiscriminatory admissions to postsecondary schools.
Services for Students with Disabilities			
FAPE	*Public P–12*: Schools must provide a FAPE to every eligible student. 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 which conforms to the student's individualized education program (IEP). The IEP should be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Private P–12*: Students placed by LEAs in private school are entitled	*Public P–12:* Covered schools must provide eligible students with a FAPE, which is 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. *Private P–12*: No FAPE requirement. Regulations for private schools require minor adjustments to provide an appropriate education, although other generally applicable Section	Does not address provision of a FAPE, but some courts hold that Section 504 standards apply.

	Individuals with Disabilities Education Act, Part B (IDEA)	Section 504 of the Rehabilitation Act (Section 504)	Americans with Disabilities Act (ADA)
	to a FAPE. Parentally placed students are not entitled to a FAPE. Available services for these students are negotiated between the LEA, private schools, and parents.	504 regulations may require more. *Postsecondary:* No FAPE requirement.	
Services for students with disabilities	Students with an IEP are entitled to special education and, if necessary, related services. Special education is instruction specially designed to meet the unique needs of a child with a disability. Related services are supportive services necessary for the child to benefit from special education. Examples include: speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), social work services, counseling services (including rehabilitation counseling), orientation and mobility services, and medical services.	Requires provision of reasonable accommodations/modifications and auxiliary aids and services in all school programs. Reasonable accommodations and modifications are changes to school policies or the provision of services that allow students with disabilities to enjoy equal educational opportunity. Auxiliary aids and services are communication aids that enable effective communication for students with disabilities. Schools do not have to provide accommodations or auxiliary aids and services that they show constitute a fundamental alteration of their programs or services or an undue burden.	Same as Section 504.
Other Protections			
	The IDEA does not prohibit disparate treatment, disparate impact, or disability-based harassment unless such conduct leads to the denial of a FAPE. Courts are divided as to whether the IDEA prohibits retaliation, i.e., adverse actions against a person for exercising their rights.	Prohibits intentional discrimination against people with disabilities (disparate treatment). Whether Section 504 prohibits unintentional discrimination against people with disabilities (disparate impact) is unsettled. Courts tend to hold that Section 504 prohibits deliberate indifference to disability-based harassment. Prohibits retaliation and interference. Retaliation and interference are, generally speaking, adverse actions against a person for exercising their rights.	Prohibits intentional discrimination against people with disabilities (disparate treatment). Title III prohibits unintentional discrimination against people with disabilities (disparate impact). Whether Title II does so is unsettled. Courts tend to hold that the ADA prohibits deliberate indifference to disability-based harassment. Prohibits retaliation and interference. Retaliation and interference are, generally speaking, adverse actions against a person for exercising their rights.

	Individuals with Disabilities Education Act, Part B (IDEA)	Section 504 of the Rehabilitation Act (Section 504)	Americans with Disabilities Act (ADA)
Enforcement			
Administrative procedures	Complainants must go through the IDEA's administrative procedure before filing suit in court. The administrative procedure requires the filing of a complaint with the LEA, attempted informal resolution, a due process hearing, and potential appeal to the SEA (unless the SEA held the due process hearing). Most IDEA complaints end or are resolved during the course of these required administrative procedures.	*Public P–12*: Complainants must go through the IDEA's administrative procedure before going to court if their Section 504 claim is based on the denial of a FAPE and they seek relief available under the IDEA (e.g., injunctive relief or compensatory education). Schools must maintain due process procedures for handling Section 504 complaints which may, but do not have to, be the same as their IDEA complaint procedures. Complainants may, but do not have to, file administrative complaints with the federal agency providing funding to the school, likely the Department of Education (ED). *Private P–12 and postsecondary*: Complainants may, but do not have to, file administrative complaints with ED before going to court.	*Public P–12*: Complainants must go through the IDEA's administrative procedure before going to court if their ADA claim is based on the denial of a FAPE and they seek relief available under the IDEA (e.g., injunctive relief or compensatory education). Complainants may, but do not have to, file administrative complaints with the Department of Justice (DOJ) or ED. *Private P–12*: Complainants may, but do not have to, file administrative complaints with DOJ before going to court. *Postsecondary*: Complainants may, but do not have to, file administrative complaints with DOJ (Titles II and III) or ED (Title II only) before going court.
Remedies	*Substantive violations*: Injunctive relief, compensatory education (including reimbursement for educational costs), attorneys' fees. *Procedural violations*: Injunctive relief. Courts may find parties prevailing on only procedural claims are not entitled to attorneys' fees. Compensatory damages are never available.	Injunctive relief, attorneys' fees. Most courts hold that damages are available only for intentional discrimination. Emotional distress damages are never available.	*Title II*: Injunctive relief, attorneys' fees. Most courts hold that damages are available only for intentional discrimination. Availability of emotional distress damages is unclear—courts increasingly say no. *Title III*: Injunctive relief, attorneys' fees. Damages are never available.

Source: CRS analysis of IDEA Part B, Section 504, and the ADA.

a. The IDEA requires states to make a FAPE 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 21 would 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. *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 2024, 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. Part C of the IDEA, 20 U.S.C. §§ 1431–1444, authorizes a grant program to the states to implement a system of early intervention services for infants and toddlers with disabilities, from birth through age 2. *See* 20 U.S.C. §§ 1432(1), (5), 1433. For more information on Part C, see CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities* (2024).

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