

Comparing and Contrasting the IDEA and Section 504: A Legal and Practical Perspective



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IDEA and 504 Comparison Chart

Purpose

IDEA	Section 504
Is a federal statute whose purpose is to ensure a free and appropriate education (FAPE) for children with disabilities who fall within one of the specific disability categories as defined by the law.	Is a broad antidiscrimination law that protects the rights of individuals with disabilities in any agency, school, or institution receiving federal funds to provide persons with disabilities, to the greatest extent possible, an opportunity to fully participate with their peers.

IDEA and 504 Comparison Chart Eligibility and Who is Protected?

IDEA	Section 504
<p>Covers eligible students ages <u>3-21</u> who have been identified as having a <u>particular disability</u> (specific disabilities defined under 34 CFR 300.8) and whose disability <u>adversely affects their educational performance</u> and/or ability to benefit from general education.</p> <p>Specific disabilities include: Autism, Deaf-blindness; Deafness, Emotional Disturbance, Hearing impairment, Intellectual, Multiple disabilities, Orthopedic impairment, Other Health Impairment, Specific learning disability, Speech or language impairment, Traumatic brain injury, Visual impairment including blindness.</p>	<p>Broader, or more inclusive than IDEA.</p> <p>Covers all persons with a “disability” from discrimination in educational settings based solely on their disability.</p> <p>“Disability” is defined as a physical or mental impairment that substantially limits one or more major life activities. (Who has a record of such an impairment; or is regarded as having such impairment).</p> <p><u>Examples of Major Life Activities:</u> Seeing, hearing, eating, sleeping, standing, lifting, speaking, breathing, learning, reading, thinking, communicating and concentrating.</p>

IDEA and 504 Comparison Chart Eligibility and Who is Protected?-Con't

IDEA	Section 504
<p>Decision of eligibility for IDEA is made by IEP Team upon the completion of the administration of assessments and other evaluation measures.</p>	<p>Decision of eligibility is made by a Section 504 Committee upon the completion of the relevant assessments and other evaluation measures.</p> <p>The 504 Committee is made up of persons knowledgeable about the student, evaluation data, and available educational placement options.</p>

IDEA and 504 Comparison Chart Services

IDEA	Section 504
<p>FAPE: (1) Provides individual supplemental special education and related services and supports in addition to what is provided to students in the general curriculum to ensure that the child has access to and benefits from the general curriculum. (2) Education and services provided free of charge to the parent. (3) Services must meet the standards of the State Educational agency and services are provided (4) in accordance with an individualized education plan (IEP). (5) Services include an appropriate preschool, elementary, or secondary school education.</p>	<p>Requires schools to eliminate barriers that would prevent the student from participating fully in the programs and services offered in the general curriculum.</p> <p>FAPE: (1) a recipient that operates a public elementary or secondary education program (2) shall provide a free appropriate public education to each qualified person with a disability who is in the district, regardless of the nature of the severity of the person's disability.</p>

IDEA and 504 Comparison Chart

Requirements for Delivering Services

IDEA	Section 504
<p>Requires a written Individualized Education Program (<u>IEP</u>) with specific content addressing the disability directly and specifying educational services to be delivered ("<u>special education</u>" and <u>related services</u>) mandating transition planning for students 16 and over, as well as a Behavior Intervention Plan (BIP) for any child with a disability that has a behavioral issue.</p> <p>In <i>Endrew F. v. Douglas County School District RE-1</i>, 69 IDELR 174 (2017), the U.S. Supreme Court held that to meet its FAPE obligation under the IDEA, a district must offer an IEP <u>reasonably calculated</u> to enable a child to make <u>progress appropriate in light of the child's circumstances</u>.</p> <p>Only IDEA <u>requires</u> that the services provided meet the standards of the state educational agency.</p>	<p>Does <u>not</u> require a written IEP but does require a documented plan.</p> <p>"Appropriate Education" means comparable to the one provided to general education students.</p> <p>Requires that reasonable accommodations be made for the child with a disability.</p> <p>Requires the school to provide reasonable accommodations, supports, and auxiliary aides to allow the child with a disability to participate in the general curriculum.</p> <p>Services are often provided under a Section 504 plan.</p> <p>The quality of education services provided to students with or without disabilities must be equal.</p>

IDEA and 504 Comparison Chart Funding

IDEA	Section 504
Provides additional funding to states and local school districts to help cover the excess costs of providing special education to eligible students.	<p>Does not provide any additional funding to states or local school districts.</p> <p>Additionally, IDEA funds may not be used to serve children found eligible under section 504 only.</p> <p>State funding mechanisms must not result in placements that violate FAPE requirements under Section 504.</p>

IDEA and 504 Comparison Chart Evaluation Procedures

IDEA	Section 504
<p>Full evaluation is required, using a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent that may assist the team in determining whether the child has a disability and how it affects the child's educational program.</p> <p>Multiple assessment tools must be used to assess the child in all areas of the suspected disability.</p>	<p>Concept of an evaluation under Section 504 is essentially the same as that of the IDEA. Evaluation draws on information from a variety of sources in the area of concern.</p> <p>A group decision is made with persons knowledgeable about the student, evaluation data, and available educational placement options (504 Team/Committee).</p>

IDEA and 504 Comparison Chart Evaluation Procedures-Con't

IDEA	Section 504
<p>Written consent is <u>necessary</u> by parent or guardian before an initial evaluation is conducted.</p> <p>The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation.</p> <p>Requires a reevaluation every 3 years by IEP team to determine if services are still needed to address student disability unless the parent and other members of the IEP team agree it is not necessary.</p>	<p>Section 504 has no express requirement for obtaining written consent; OCR has concluded parental consent is necessary.</p> <p>No set timelines on how long a district has to conduct an initial evaluation.</p> <p>Evaluation must be administered in student's native language.</p> <p>Requires district to establish procedures for "periodic" reevaluation of eligible students. Reevaluation procedures, consistent with the IDEA, is one means of meeting the requirement.</p>

IDEA and 504 Comparison Chart Evaluation Procedures-Con't

IDEA	Section 504
<p><u>Child Find under the IDEA:</u> Obligation to evaluate extends to all children with disabilities who are homeless children, children who are wards of the State, and children with disabilities attending private schools if those children reside in their jurisdiction.</p> <p>Not required to test all children for whom evaluations are requested. If district has no reasonable basis for suspecting that the student has a disability, it may refuse to conduct an evaluation.</p>	<p><u>Child Find under Section 504:</u> Annually undertake to identify and locate every qualified person with a disability residing in the district's jurisdiction who is not receiving a public education. In addition, districts must take appropriate steps to notify students with disabilities and their parents or guardians about this child find duty.</p> <p>Obligation to evaluate extends to privately enrolled students and also to those children residing in hospitals and universities. Homeless children within district boundaries are also included.</p> <p>Like the IDEA, district is <u>not</u> required to test all children for whom evaluations are requested.</p>

IDEA and 504 Comparison Chart Evaluation Procedures-Con't

IDEA	Section 504
<p><u>Parentally placed private school students</u>: IDEA requires the district in which the <i>private school is located</i> to evaluate the child. The home district must still as well evaluate the student's IDEA eligibility upon the parent's request.</p>	<p><u>Parentally placed private school students</u>: Section 504 regulations states that the <u>district of residence</u> (based on parental residence) is responsible for child find and evaluations.</p>

IDEA and 504 Comparison Chart Independent Evaluation

IDEA	Section 504
<p>Allows parents to request an Independent Educational Evaluation (IEE) at the school district's expense if parent/guardian disagrees with the evaluation obtained by the school district.</p> <p>The Independent Evaluator must meet the same criteria as the district requires for their employees and must be approved by all parties.</p>	<p>Does not expressly allow independent evaluations at the district's expense or the ability to request an independent educational evaluation.</p> <p>OCR has required reimbursement of the costs of an IEE as a remedy for the district's failure to evaluate.</p>

IDEA and 504 Comparison Chart Procedural Safeguards

IDEA	Section 504
<p>Requires written notice to parent/guardian prior to identification, evaluation, and/or placement of child.</p> <p>Written notice prior to change in placement or change in services.</p> <p>For any child with behavioral concerns a Functional Behavior Assessment (FBA) must be completed and a Behavior Intervention Plan (BIP) written to assist student in learning appropriate behaviors and providing supports to enable student to be successful in their learning community.</p>	<p>Does not require written notice.</p> <p>Requires districts to extend to the parents of a student with a disability in connection with identifying, evaluating, or determining an educational placement of a child the following:</p> <ul style="list-style-type: none"> • Notice • An opportunity for the parents to examine relevant records; • An impartial hearing with an opportunity for participation by the parents and representation by counsel; and a • Review procedure.

IDEA and 504 Comparison Chart LRE

IDEA	Section 504
<p>Must ensure that to the <i>maximum extent</i> appropriate, children with disabilities are educated with their nondisabled peers, and special classes or separate schooling only occurs if the <i>nature or severity of the disability</i> is such that education in regular classes with the use of supplementary aids and services <i>cannot be achieved satisfactorily</i>; requires an express <i>continuum</i> of alternative placements.</p>	<p>District/Charter shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A District/Charter shall place a handicapped person in the regular educational environment unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.</p> <p>No express continuum of alternative placements provision, but same general concepts have been applied under Section 504 through OCR interpretations.</p>

IDEA and 504 Comparison Chart Placement Decisions

IDEA	Section 504
<p>Requires schools to use information from a variety of sources, consider all documented information, and use a team approach to make placement decisions.</p> <p>Team members are specifically identified under IDEA, and must be knowledgeable about the child, evaluation data, and the continuum of placements and services available. Parents are a necessary member of the IEP team.</p>	<p>Requires schools to use information from a variety of sources, consider all documented information, and use a team approach to make eligibility decisions.</p> <p>Team members should be knowledgeable about the child, evaluation data, and the continuum of placements and services available. (Section 504 Committee decision).</p> <p>Unlike the IDEA, Section 504 does not specifically identify individuals who must participate in the decision-making process.</p>

IDEA and 504 Comparison Chart Placement Decisions-Con't

IDEA	Section 504
Requires that student receives a <i>free and appropriate education</i> with his/her nondisabled peers in the <i>least restricted environment (LRE)</i> . IEP meeting is required before any change in placement or services is made.	The student must receive a <i>free and appropriate education (FAPE)</i> with his/her nondisabled peers.

IDEA and 504 Comparison Chart Placement Decisions-Con't

IDEA	Section 504
<p>Placement decision is</p> <ol style="list-style-type: none">1. determined at least annually;2. based on the child's IEP; and3. as close as possible to the child's home.	<p>The "placement decision" under Section 504 is the determination of eligibility, the special education programming, related services, and accommodations that a student with a disability must receive in order to receive FAPE and the setting in which he/she will be educated.</p>

IDEA and 504 Comparison Chart Due Process

IDEA	Section 504
<p>Requires districts to provide resolution sessions and due process hearings (impartial hearing) for parents/guardians who disagree with identification, evaluation, and/or implementation of an IEP or students Least Restricted Environment (LRE) placement.</p> <p>Parents can also utilize the state educational agency’s complaint resolution process</p>	<p>Requires districts to provide a grievance procedure for parents and students who disagree with identification, evaluation, implementation of plan, or LRE placement including an impartial hearing with opportunity for participation by parents/guardians and their counsel.</p> <p>Due process hearing not required before Office for Civil Rights (OCR) involvement or court action unless student is also covered by IDEA.</p> <p><u>No “stay put” requirement.</u></p>

IDEA and 504 Comparison Chart Remedies

IDEA	Section 504
Circuit Courts consistently have held that the IDEA does not allow parents to recover monetary damages for a denial of FAPE.	Monetary damages may be available for a denial of FAPE under Section 504.

To determine whether the substance of essence of a claims is about FAPE or is about Section 504 or the ADA's other aspects involves two questions:

1. Could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school?; and
2. could an adult at the school have made the same complaint?

Fry v. Napoleon Cmty. Schs., 69 IDELR 116 (U.S. 2017).

IDEA and 504 Comparison Chart Discipline/MDR

IDEA	Section 504
<p>If an IEP team changes a student's placement in response to his misconduct, that new setting becomes the student's stay-put placement. The child remains in the alternate setting pending the decision of the hearing officer, the end of the disciplinary placement term, or an agreement by all parties on the appropriate placement, whichever occurs first.</p> <p>Districts must continue to provide educational services for IDEA-eligible students with disabilities who have been suspended for more than 10 school days or expelled.</p>	<p>Unlike the IDEA, Section 504 does not include an explicit stay-put provision guaranteeing the student will remain in his current educational placement pending the resolution of due process disputes between parents and schools. However, OCR has said Section 504 has an implicit stay-put component.</p> <p>Unlike the IDEA, Section 504 has no explicit provision stating districts must provide FAPE to students with disabilities who are suspended or expelled.</p>

IDEA and 504 Comparison Chart Discipline/MDR

IDEA	Section 504
<p>The IDEA sets forth the following requirements for conducting a MDR: Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:</p> <ol style="list-style-type: none"> 1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or 2. If the conduct in question was the direct result of the LEA's failure to implement the IEP 	<p>An MDR is conducted in substantially the same way, regardless of whether the student is IDEA-eligible or covered only under Section 504.</p> <p>One key difference is that if a child served under Section 504 is caught with alcohol on school, he can be sent to an interim alternative educational setting without regard to whether the behavior is determined to be a manifestation of his disability.</p>

THANK YOU!

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