



Special Education/Disability Access

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Background

Students with mental and physical disabilities in the United States were historically segregated from other students in most educational systems. While special programs were modified to provide different types of training for disabled children, these children were ordinarily separated from the mainstream students, not only to protect the children in special education but also to avoid disruption among other students without disabilities. The majority of disabled children did not attend school at all.

The move toward the recognition of rights for disabled students began with the famous 1954 case, *Brown v. Board of Education*, which established that "separate but equal" accommodations in education were not, in fact, equal. As other [CIVIL RIGHTS](#) movements gained momentum throughout the 1960s, proponents for rights of disabled individuals also began to assert the rights of these individuals. Two landmark federal district court decisions in 1971 and 1972, *PARC v. Pennsylvania* and *Mills v. Board of Education*, established that denying education to children with disabilities and denying the proper procedures in such cases violated protections under the Fourteenth Amendment to the United States Constitution. A number of other cases since then have further established rights of disabled children.

A number of federal statutes have formed the basis for guaranteeing rights of disabled children since the mid-1970s. The following is a summary of these statutes:

- Rehabilitation Act of 1973: This act established that those who receive federal financial assistance cannot discriminate on the basis of a [DISABILITY](#).
- Education for All Handicapped Children Act (EAHCA): Passed in 1975, this act provided support to state special education programs to provide free appropriate public education to disabled children.
- Perkins Act: Passed in 1984, this act required that ten percent of federal funding for vocational education must support the education of disabled students.
- Handicapped Children's Protection Act of 1986: This act amended the EAHCA to provide attorney's fees and costs to be awarded to parents who prevailed in an EAHCA case.
- Education to the Handicapped Act Amendments of 1986: These acts added early intervention services for three- to five-year-olds, with incentive programs for younger children with disabilities.
- Individuals with Disabilities Education Act (IDEA): Passed in 1990, this act amended the EAHCA by modifying a number of the provisions in the original [STATUTE](#).

- Americans with Disabilities Act (ADA): Passed in 1990, this major piece of legislation set forth broad prohibitions against [DISCRIMINATION](#) of disabled individuals by most employers, public agencies, and those who provide public accommodations. Two titles in the Act apply specifically to schools.

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) is primarily a funding statute. It requires that each state educational authority develop a policy that ensures free appropriate public education is being provided to all children with disabilities by local agencies. The amount of funding is determined on a state-by-state basis by the number of disabled children between the ages of three and 21 who are receiving special education and/or other related services. At the center of IDEA is a requirement that a local educational agency develop on at least an annual basis an individualized education program for each disabled child. This plan states the current educational status of the child and sets forth goals and objectives for the child to meet. Room for parental consent or involvement is provided at each step in the child's education.

Free and Appropriate Public Education

IDEA defines free appropriate public education as special education and related services that are provided at public expense, under public supervision and direction. Free appropriate public education must also meet standards set forth by state educational agencies; must include appropriate education at the preschool, elementary, and secondary levels; and must be provided in conformity with individualized education programs required under IDEA.

State Educational Agencies

IDEA shifts responsibility for ensuring that educational programs are in compliance with the provisions of IDEA to state education agencies. These agencies are required to promulgate a complaint procedure that provides the following services:

- Receive and resolve complaints against state or local education agencies
- Review appeals from decisions regarding a local education agency complaint
- Conduct independent on-site investigations
- Set forth a 60-day time limit to investigate and resolve complaints
- Allow time extensions only in exceptional circumstances
- Review relevant information and issue written decisions
- Provide an enforcement mechanism

Local Educational Agencies

As the primary entity required to develop individualized educational programs for each disabled child in a particular locality, local educational agencies are at the center of the provision of IDEA. Residency of each child is the primary consideration for determining which local educational agency has responsibility for developing these educational programs. In some cases, determining the appropriate local agency can become difficult, particularly if the child's parents live in different districts. Many states have included provisions providing that the child's residency is that of the parent.

Individualized Education Programs

Local educational agencies must include a number of components in each individualized education program for each disabled child in its district. Among these components are the following:

- Descriptions of each child's current educational status, which describes the disabled child's cognitive skills, linguistic ability, emotional behavior, social skills and behavior, and physical ability
- Details of "measurable annual goals, including benchmarks or short-term objectives" related to the specific needs of each child, according to the provisions in IDEA
- Description of the instructional setting or placement of each disabled child
- Details of developmental, corrective, and other services designed to facilitate placement in a regular class or designed to allow disabled children to benefit from special education
- Additional specific statements required by IDEA, which relate to each child's progress, needs, advancement, and goal.

Parental Involvement

Parents are involved in each stage of the development of a child's individualized education program. Such participation in this process includes the following:

- Parents must approve each stage of the implementation of the individualized education program
- Parents participate in initial meetings and annual meetings reviewing the programs established for their children
- Parents and school districts must sign an individualized education program before each school year begins
- School districts must redevelop a new program for a disabled child at the request of a parent
- Parents are entitled to request a meeting at any time regarding the individualize education program

Additional Legislation Protecting Children with Disabilities

Section 504 of the Rehabilitation Act of 1973

Prior to the enactment of the American with Disabilities Act, the statute that provided the most comprehensive rights to disabled children other than IDEA was the Rehabilitation Act of 1973. This act forbids any entity that receives federal financial funding from discriminating on the basis of disability. The act protects all individuals with physical or mental impairments that substantially limit their major life activities and are regarded as having such impairments. Major life activities under this description include an individual's ability to care for himself or herself, performance of manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. If an entity, such as a school, violates the provisions of the Rehabilitation Act, the Department of Education will investigate. The most likely remedy for these violations is termination of federal financial assistance to the entity.

Americans with Disabilities Act

The American with Disabilities Act (ADA), passed by Congress in 1990, provides many of the same protections for disabled children as the Rehabilitation Act of 1973. However, unlike the Rehabilitation Act, the prohibitions under the ADA are not limited to those that receive federal financial assistance. The ADA is applicable in other areas as well where the provisions of the Rehabilitation Act may not provide protection. This is particularly true with respect to architectural barriers to a building. Part II of the ADA, which is

applicable to public schools, requires accessibility for the entire program. Part III, applicable to private schools, contains similar provisions.

Definition of Disability and Eligibility for Special Education Services

All school districts in the United States are required by law to identify, locate, and evaluate children with disabilities. Once this has occurred, school districts have a duty to evaluate whether the children are eligible for special education and then begin to develop individualized education programs for them. IDEA and the corresponding regulations define "children with disabilities" as those suffering from at least one of the following conditions:

- Mental retardation
- Hearing impairment
- Speech or language impairment
- Visual impairment
- Serious emotional disturbance
- Orthopedic impairment
- Autism
- Traumatic brain injury
- Specific learning disability
- Other health impairments

These disabilities must have adverse effects on disabled children in order for the children to be eligible for special education and services. The definition of disability and the application of this definition is broader under other statutes. The Americans with Disabilities Act, for example, employs a three-part definition of "disability." For the ADA to apply to an individual, the individual's physical or mental impairment must substantially limit the individual's major life activities. This individual must also have a record of such an impairment and be generally regarded as having such an impairment. Physical impairment can include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several major body systems, as defined by the statute. Mental impairment may include any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Since the definition is broader under the ADA, a child with a disability may request accommodation under the ADA, but the same child may not be eligible for special education under the provisions of IDEA.

Like the ADA, the provisions of the Rehabilitation Act of 1973 regarding the definition of disability are broader than those of IDEA. For example, a child with Acquired Immune Deficiency Syndrome may not be eligible for special education under IDEA. However, the same child may not be discriminated against on the basis of his or her disease, since AIDS and other diseases are considered disabilities under the Rehabilitation Act.

Placement of Children with Disabilities

Placement of children with disabilities under IDEA occurs after the development of an individualized education program, described above. Local agencies must take into account a variety of factors, many of which are described in relevant regulations concerning the implementation of IDEA. Such considerations include the child's performance on aptitude and achievement tests; parental input; recommendations from teachers; the physical condition of the child; the social and cultural background of the child; and the adaptive behavior of the child. If the local agency fails to provide appropriate placement, the child's parent(s) may

place the child unilaterally and seek reimbursement from the agency.

Several requirements under IDEA apply to the placement of a child. Although placement should be as close to the child's home as possible, there is no absolute requirement that the school selected is the closest to the child's home. If the closest school would not provide what would be considered free appropriate public education, the agency may select a more suitable school, even if it is farther away. The placement must be in the least restrictive environment, which generally restricts the ability of a school to segregate children with special education needs. Only in cases where the disability is so severe that regular classroom attendance would not be appropriate can complete [SEGREGATION](#) occur. This provision is often referred to as a mainstreaming requirement.

The placement of a child must be reviewed annually. If placement is changed, an existing individualized education program must support it, since placement itself is based on the IEP. Parents must be notified under IDEA requirements, and several states require that parental consent must be obtained before a local agency can make a change in placement for a disabled child.

Procedures for Alleging Violations of Statutes Protecting Disabled Children

Since IDEA is a funding statute, if a local agency fails to provide free appropriate public education to a disabled child, the remedy is that the agency loses its federal funding. Many parents of disabled children, however, seek judicial and other remedies when they feel the education being provided to their child is not sufficient. The initial body required under IDEA and other statutes to hear a complaint is the state education authority, which must hold an [IMPARTIAL](#) hearing. Specific procedures that must be followed are set forth in IDEA regulations. Once the state education authority makes its decision, a parent may appeal to another state-level agency. Parents should consult their own state's laws to determine which is the appropriate agency for such an appeal.

Judicial bodies, including either a federal or a state court, may review administrative proceedings. Judicial action may not take place until the parties have exhausted each of their administrative remedies. The most typical remedy sought by parents in cases involving special education is injunctive or declaratory relief, although in some cases, monetary damages may be appropriate.

Complaints for [INFRINGEMENT](#) of the ADA in schools should be filed with the Department of Education. Once administrative remedies have been exhausted, parties may seek [JUDICIAL REVIEW](#). Like the remedies under IDEA, most parents seek injunctive or declaratory relief, such as a court order requiring that a school provide the requested access.

State Provisions Regarding Special Education and Disability Access

Special education and disability access have become controlled primarily by federal [STATUTORY](#) schemes. This is true even though most educational regulation is governed by state statute. Under IDEA, if a state or local agency fails to provide the minimum provisions required by the statute, the state or local entity may lose federal funding. States may, however, provide greater protection than is afforded by the federal statutes.

Parents with disabled children should consult with the state educational agencies, as well as applicable state laws, to determine what rights their children may have in their particular state. The following is a listing of the appropriate agencies in each state.

Encyclopedia of Everyday Law: Special Education/Disability Access

ALABAMA: The primary state educational agency is the Special Education Services division of the Alabama State Department of Education.

ALASKA: The primary state educational agency is the Alaska Department of Education Special Education Programs.

ARKANSAS: The primary state educational agency is the Special Education Section of the Arkansas Department of Education.

CALIFORNIA: The primary state educational agency is the Special Education Division of the California Department of Education.

COLORADO: The primary state educational agency is the Special Education Services Unit of the Colorado Department of Education.

CONNECTICUT: The primary state educational agency is the Bureau of Special Education and Pupil Services of the Connecticut Department of Education.

DELAWARE: The primary state educational agency is the Exceptional Children Department of the Delaware Department of Education.

FLORIDA: The primary state educational agency is the Education for Exceptional Students Department of the Florida Department of Education.

GEORGIA: The primary state educational agency is the Division of Exceptional Students of the Georgia Department of Education.

HAWAII: The primary state educational agency is the Special Education Section of the Department of Education.

IDAHO: The primary state educational agency is the Bureau of Special Education of the Idaho State Department of Education.

ILLINOIS: The primary state educational agency is the Special Education Department of the Illinois State Board of Education.

INDIANA: The primary state educational agency is the Division of Special Education of the Department of Education.

IOWA: The primary state education agency is the Bureau of Children Family and Community Services of the Department of Education.

KANSAS: The primary state educational agency is the Student Support Services of the Kansas State Department of Education.

KENTUCKY: The primary state educational agency is the Office of Special Instructional Services of the Kentucky Department of Education.

LOUISIANA: The primary state educational agency is the Division of Special Populations of the Louisiana Department of Education.

Encyclopedia of Everyday Law: Special Education/Disability Access

MAINE: The primary state educational agency is the Special Education Department of the Maine Department of Education.

MARYLAND: The primary state educational agency is the Division of Special Education of the Maryland State Department of Education.

MASSACHUSETTS: The primary state educational agency is the Special Education Programs division of the Massachusetts State Department of Education.

MICHIGAN: The primary state educational agency is the Office of Special Education and Early Intervention Services.

MINNESOTA: The primary state educational agency is the Office of Special Education of the Minnesota Department of Children, Families, and Learning.

MISSISSIPPI: The primary state educational agency is the Office of Special Education of the Mississippi State Department of Education.

MISSOURI: The primary state educational agency is the Division of Special Education of the Missouri State Department of Education.

MONTANA: The primary state educational agency is the Special Education Division of the Montana Office of Public Instruction.

NEBRASKA: The primary state educational agency is the Special Populations Office of the Nebraska Department of Education.

NEVADA: The primary state educational agency is the Division of Special Education of the Nevada Department of Education.

NEW HAMPSHIRE: The primary state educational agency is the Bureau of Special Education of the New Hampshire Department of Education.

NEW JERSEY: The primary state educational agency is the Office of Specialized Populations of the New Jersey State Department of Education.

NEW MEXICO: The primary state educational agency is the Special Education Office of the State of Mexico Department of Education.

NEW YORK: The primary state educational agency is the Vocational and Educational Services for Individuals with Disabilities of the New York State Education Department.

NORTH CAROLINA: The primary state educational agency is the Special Education Division of the North Carolina Department of Public Instruction.

NORTH DAKOTA: The primary state educational agency is the Director of Special Education of the North Dakota Department of Public Instruction.

OHIO: The primary state educational agency is the Special Education Division of the Ohio Department of Education.

Encyclopedia of Everyday Law: Special Education/Disability Access

OKLAHOMA: The primary state educational agency is the Special Education Services Division of the Oklahoma State Department of Education.

OREGON: The primary state educational agency is the Office of Special Education of the Oregon Department of Education.

PENNSYLVANIA: The primary state educational agency is the Bureau of Special Education of the Pennsylvania Department of Education.

RHODE ISLAND: The primary state educational agency is the Office of Special Needs Services of the Rhode Island Department of Education.

SOUTH CAROLINA: The primary state educational agency is the Office of Special Education of the South Carolina Department of Education.

SOUTH DAKOTA: The primary state educational agency is the Office of Special Education of the Division of Education Resources and Services.

TENNESSEE: The primary state educational agency is the Division of Special Education of the Tennessee Department of Education.

TEXAS: The primary state educational agency is the Office for the Education of Special Populations of the Texas Education Agency.

UTAH: The primary state educational agency is the At Risk and Special Education Services division of the Utah State Office of Education.

VERMONT: The primary state educational agency is the Special Education Division of the Vermont Department of Education.

VIRGINIA: The primary state educational agency is the Division of Special Programs of the Virginia Department of Education.

WASHINGTON: The primary state educational agency is the Special Education Section of the Office of Superintendent of Public Instruction.

WEST VIRGINIA: The primary state educational agency is the Special Education Division of the West Virginia Department of Education.

WISCONSIN: The primary state educational agency is the Division for Learning Support, Equity and Advocacy of the Department of Public Instruction.

WYOMING: The primary state educational agency is the Special Education Programs Division of the Wyoming Department of Education.

Additional Resources

The Complete IEP Guide: How to Advocate for Your Special Ed Child. Siegel, Lawrence M., Nolo Press, 1999.

Encyclopedia of Everyday Law: Special Education/Disability Access

Education Law. Rapp, James A., Lexis Publishing, 2001.

Special Education Law. 2nd ed., Guernsey, Thomas F., and Kathe Klare, Carolina Academic Press, 2001.

Special Education Law. 3rd ed., Rothstein, Laura F., Addison, Wesley, Longman, Inc., 2000.

U. S. Code, Title 20: Education, Chapter 33, Education of Individuals with Disabilities. U. S. House of Representatives, 1999. Available at http://uscode.house.gov/title_20.htm.

Organizations

The Council for Exceptional Children (CEC)

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MAX Foundation

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U. S. Department of Education, Office of Special Education Programs

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Phone: (202) 732-1007

U. S. Department of Education, Office for Civil Rights

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