

ADVOCACY

“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”

— Franklin D. Roosevelt



Americans with Disabilities Act of 1990 (ADA)

Type/purpose?

A civil rights law to prevent discrimination solely on the basis of disability in employment, public services, and accommodations.

Who is protected?

Any person with a disability who:

1. has a physical or mental disability that greatly limits one or more life activities,
2. has a record of such a disability, or
3. is regarded as having such a disability.

Further, the person must be qualified for the program, service, or job.

Is there a responsibility to provide a Free Appropriate Public Education (FAPE)?

Not directly. However, ADA protections apply to nonsectarian private schools, but not to organizations or entities controlled by religious organizations. ADA provides additional protection in combination with actions brought under Section 504 and the Individuals with Disabilities Education Act (IDEA). Reasonable accommodations are required for eligible students with a disability to perform essential functions of the job. This applies to any part of the special education program that may be community-based and involve job training/placement.

Is there funding to implement these requirements?

No, but limited tax credits may be available for removing architectural or transportation barriers. Also, many federal agencies provide grant funds to support training and to provide technical assistance to public and private institutions.

Are there procedural safeguards?

The ADA does not specify procedural safeguards related to special education. It does, however, detail the administrative requirements, complaint procedures, and the consequences for noncompliance, related to both services and employment.

Are there evaluation/placement procedures?

The ADA does not specify evaluation and placement procedures. It does, however, specify provision of reasonable accommodations for eligible students across educational activities and settings. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, modifying tests, redesigning services to accessible locations, altering existing facilities, and building new facilities.

What is due process?

The ADA does not define specific due process procedures. People with disabilities have the same remedies that are available under Title VII of the Civil Rights Act of 1964, as amended in 1991. Thus, people who are discriminated against may file a complaint with the relevant federal agency or sue in federal court. Enforcement agencies encourage informal mediation and voluntary compliance.

Individuals with Disabilities Education Act (IDEA)

Type/purpose?

An education act to provide federal, financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities.

Who is protected?

Children ages 3-21 who are determined by a multidisciplinary team to be eligible within one or more of 13 specific categories of disability and who need special education and related services. Categories include:

- Autism
- Deafness
- Deaf-blindness
- Hearing impairments
- Mental retardation
- Multiple disabilities
- Orthopedic impairments
- Other health impairments
- Serious emotional disturbance
- Specific learning disabilities
- Speech or language impairments
- Traumatic brain injury, and
- Visual impairment.

Is there a responsibility to provide a Free Appropriate Public Education (FAPE)?

Yes. A FAPE is defined to mean special education and related services. Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability...” Related services are provided if students require them in order to benefit from specially designed instruction. States are required to ensure the provision of “full educational opportunity” to all children with disabilities. The Individual with Disabilities Education Act (IDEA) requires the development of an Individualized Education Program (IEP) document with specific content and a required number of specific participants at an IEP meeting. (See Educational Options section for information regarding IEP.)

Is there funding to implement these requirements?

Yes. IDEA provides federal funds under Parts B and C to assist State and local education agencies in meeting IDEA requirements to serve infants, toddlers, children, and youth with disabilities.

Are there procedural safeguards?

IDEA requires written notice to parents regarding identification, evaluation, and/or placement. Further, written notice must be made prior to any change in placement. The Act delineates the required components of the written notices.

Are there evaluation/placement procedures?

A comprehensive evaluation is required. A multidisciplinary team evaluates the child, and parental consent is required before an initial evaluation. IDEA requires that the IEP team is to determine if reevaluations are to be conducted every 3 years. A reevaluation is not required before a significant change in placement. For evaluation and placement decisions, IDEA requires:

1. That more than one single procedure or information source be used,
2. That information from all sources be documented and carefully considered,
3. That the eligibility decision be made by a group of persons who know about the student, the evaluation data, and placement options, and
4. That the placement decision serves the student in the least restrictive environment.

An IEP review meeting is required before any change in placement.

What is due process?

IDEA defines specific requirements for local education agencies to provide neutral hearings for parents who disagree with the identification, evaluation, or placement of a child. For more information of the IDEA as it relates to children who are deaf or hard of hearing, there is the following question and answer book.

1997 Reauthorization of IDEA - Impact on Deaf and Hard of Hearing Students

The IDEA (Individuals with Disabilities Education Act) has had some changes that have recently taken effect. You may hear it referred to as the 1997 Reauthorization. A couple of things that effect deaf and hard of hearing children are as follows:

“language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.”

The 1997 Amendments also require the Individualized Education Plan (IEP) team to consider whether the child requires assistive technology devices and services. Children enrolled in private schools no longer automatically get services from the public schools. The school district must agree that they cannot provide services for the child and that the private school is the better setting. This doesn’t mean that a school district won’t provide services but they don’t have to if they weren’t involved in the decision to place the child in the private school. Please visit the U.S. Department of Education website to obtain more information about the 1997 Reauthorization of the IDEA.

“Everybody’s special in their own way. Yes, it’s true, being deaf has disadvantages ... we are also lucky. I have friends of the deaf and hearing. I’m really happy with that! I’ve had the chance to be successful, and I believe I am! I’ve participated in the yearbook staff, drama club, FHA, basketball team and volunteering at Chippenham Hospital and Lucy Coor Nursing Home. Now, if I’m deaf and able to do these activities, anybody can! We can do things for ourselves, being deaf isn’t a handicap, it’s a part of who you are.”

— Amy (age 14)

Section 504 of the Rehabilitation Act of 1973

Type/purpose?

A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.

Who is protected?

Any person who:

1. has a physical or mental impairment that substantially limits one or more major life activities,
2. has a record of such an impairment, or
3. is regarded as having such an impairment.

Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.

Is there a responsibility to provide a Free Appropriate Public Education (FAPE)?

Yes. An “appropriate” education means an education comparable to that provided to students without disabilities. This may be defined as regular or special education services. Students can receive related services under Section 504 even if they are not provided any special education. Section 504 does require development of a plan, although this written document is not mandated. The Individualized Education Program (IEP) of the Individuals with Disabilities Education Act (IDEA) may be used for the Section 504 written plan. Many experts recommend that a group of persons knowledgeable about the student convene and specify the agreed-upon services.

Is there funding to implement these requirements?

No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible only under Section 504.

Are there procedural safeguards?

Section 504 requires notice to parents regarding identification, evaluation, and/or placement. Written notice is recommended. Notice must be made only before a “significant change” in placement. Following IDEA procedural safeguards is one way to meet Section 504 mandates.

Are there evaluation/placement procedures?

Unlike IDEA, Section 504 requires only notice, not consent, for evaluation. It is recommended that districts obtain parental consent. Like IDEA, evaluation and placement procedures under Section 504 require that information be obtained from a variety of sources in the area of concern that all data are documented and considered and that decisions are made by a group of persons knowledgeable about the student, evaluation data, and placement options. Section 504 requires periodic reevaluations, but does not specify any timelines for placement. Section 504 requires that students be educated with their non-disabled peers to the maximum extent appropriate. Section 504 does not require a meeting or any change in placement.

What is due process?

Section 504 requires local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. It requires that parents have an opportunity to participate in the hearing process and to be represented by counsel. Beyond this, due process details are left to the discretion of the local education agency. It is recommended that districts develop policy guidance and procedures.

Early Hearing Loss Detection, Diagnosis, & Intervention Act

An exciting piece of legislation was introduced by Representative James Walsh (R-NY) in 1997. The “Early Hearing Loss Detection, Diagnosis, and Intervention Act of 1997” (H.R.2923) provided grant support to individual states so that they could establish screening and intervention programs for newborns and infants with hearing loss. The legislation called for:

1. Screening all babies born in hospitals or birthing centers for hearing loss prior to discharge.
2. Screening all babies not born in hospitals within the first two months of life.

3. Diagnostic audiologic testing performed in a timely manner when hearing loss is suspected.
4. Linkage with a community system of early intervention for those infants diagnosed with hearing loss.
5. Establishment of public policy for the early identification and intervention of newborns with hearing loss.

The benefits of early diagnosis and intervention are well documented. Representative Walsh’s bill has moved the country toward universal newborn hearing screening (UNHS) and benefited countless children and families.

