

TOOLS FOR EDUCATORS

Equity for Students with Disabilities

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Data and Research on Students with Disabilities

About 9 percent of young people aged 6-21 are students with disabilities served under IDEA – a total of nearly 6 million students.¹

The research clearly shows the benefits of inclusion of students with disabilities in general education (non-segregated) classrooms, and rates of inclusion of students with disabilities in general education classrooms have increased over time; but lack of inclusion persists, and seems to be more the result of lack of needed support services and/or race/ethnicity and/or geography and/or parental activism than individualized needs of a student.²

While IDEA students with disabilities represent 12 percent of student enrollment overall, they represent 26 percent of students receiving one or more out-of-school suspensions, and 28 percent of school-related arrests or law enforcement referrals; all too often, suspensions, arrests and law enforcement referrals are the result of failure to provide needed special education services. Further, students with disabilities represent a whopping 66 percent of students secluded, and a shocking 71 percent of students restrained³—despite evidence that the implementation of interventions and supports can reduce the reliance on these less effective and potentially dangerous restraint/seclusion practices, which also can be in violation of federal law.⁴

Graduation rates for students with disabilities have improved over the past decade (56 percent in 2006-07 to 70 percent in 2015-16), but rates are still below those for students without disabilities.⁵

Legal Requirements for Schools Serving Students with Disabilities⁶

Section 504 of the Rehabilitation Act of 1973⁷ (“Section 504”), with its regulations,⁸ and Title II of the Americans with Disabilities Act⁹ (“ADA”), with its regulations,¹⁰ prohibit discrimination based on disability, including in state and local public education programs (ADA) and federally-funded education programs (Section 504). Many students with disabilities are also protected under and the Individuals with Disabilities Education Act (“IDEA”)¹¹ and its regulations.¹²

WHO IS A STUDENT WITH A DISABILITY?

Under Section 504 and the ADA, a student with a disability is defined as any individual with a physical or mental impairment that substantially limits one or more major life activities (including self-care, manual tasks, walking, seeing, hearing, speaking, breathing, and learning). Under the IDEA, children ages 3-21 may qualify as having a disability if a multidisciplinary team finds them eligible within one or more of 13 disability categories.¹³

EVALUATION

Under Section 504 and IDEA, when a school is aware—or has reason to suspect—that a student has a disability, a school must promptly conduct an individualized evaluation, at no cost to the student’s parents (identification and evaluation are referred to as the “child find” process).

EDUCATION REQUIRED

Under Section 504 and IDEA, elementary/secondary students with disabilities are entitled to “a free, appropriate public education” (FAPE), including related services at no charge to parents. Following *Endrew F.*, a recent U.S. Supreme Court decision, such services must be “reasonably calculated” to enable a child to make appropriate progress “in light of the child’s circumstances.”¹⁴ Under Section 504, post-secondary students are entitled to appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school’s program, unless doing so imposes an “undue burden” on the school.¹⁵

INCLUSION

Section 504 and IDEA ensure inclusion of students with disabilities in regular classrooms to the maximum extent appropriate for the child—also called the “least restrictive environment” (LRE).

INDIVIDUALIZED PLAN

Under Section 504 and IDEA, each student with a disability is entitled to an individualized plan developed by a team. If a student is IDEA-eligible, the Individualized Education Program (IEP) to enable the child to receive FAPE in the LRE also suffices to meet 504 plan requirements.

SPECIAL RULES ON SCHOOL DISCIPLINE

IDEA includes restrictions on disciplinary actions for students with disabilities; schools must hold a “manifestation determination review” (MDR), to determine if the behavior leading to the potential disciplinary action was a manifestation of the student’s disability. If it was, the student should receive a “functional behavioral assessment” and a “behavioral intervention plan.” Students may not be removed long term from school for behavior related to their disability, except in very specific circumstances.

PERIODIC RE-EVALUATION

Schools must engage in periodic re-evaluation of students who have been provided special education or related services and re-evaluation prior to a significant change in placement. The IDEA regulations require that the school re-evaluate the student at least once every three years, unless the parent and the public agency agree that a re-evaluation is unnecessary.

PARENTS’ RIGHTS

IDEA procedural safeguards for parents/students are more detailed than Section 504 protections. Under IDEA, schools must allow the parents or guardians of students in elementary and secondary schools to challenge evaluations, placements, and other decisions; they must also notify parents or guardians of any evaluation or placement action, and allow them to examine their child’s records. If parents/guardians disagree with the school’s decisions, they should have an impartial hearing with the opportunity to participate.

Questions to Consider

1. Identifying Educational Impacts

Are children promptly evaluated to determine whether they have a disability? Once they are identified as having a disability, do students promptly receive an IEP and/or receive any needed accommodations? Are children’s IEPs designed in a way to enable each child to make academic and behavioral progress? Do students with disabilities receive instruction alongside children who are not disabled? Has a student with disabilities lost instructional time due to disciplinary actions? Was the discipline linked to behaviors stemming from his or her disability?

2. Identifying Procedural Violations

Are parents able to participate in meetings regarding their child’s identification, evaluation, and placement? If a child’s placement is changed, did parents receive notice from the school district?

3. Educator Training/Role

Are educators in the school trained on effective differentiated instruction strategies that might be needed to implement an IEP? What special advocacy might educators engage in, to help ensure needs of students with disabilities are met? Are schools providing educators with sufficient in-class supports (e.g., educational support professionals, curricular resources, technology) to meet the needs of students with disabilities and other students in the classroom? What else can school leaders do to support students with disabilities?

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¹ <https://www2.ed.gov/about/reports/annual/osep/2018/parts-b-c/40th-arc-for-idea.pdf>

² https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf

³ <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

⁴ <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>

⁵ <https://www2.ed.gov/about/reports/annual/osep/2018/parts-b-c/40th-arc-for-idea.pdf>

⁶ <https://www2.ed.gov/about/offices/list/ocr/docs/placpub.html>

⁷ <https://legcounsel.house.gov/Comps/Rehabilitation%20Act%20of%201973.pdf>, pp. 142-3.

⁸ <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

⁹ <https://civilrights.findlaw.com/discrimination/title-ii-of-the-americans-with-disabilities-act.html>

¹⁰ https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#title2regs

¹¹ <https://sites.ed.gov/idea/statute-chapter-33>

¹² <https://sites.ed.gov/idea/regs/>

¹³ <https://dredf.org/legal-advocacy/laws/a-comparison-of-ada-idea-and-section-504/>. These 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 impairments.

¹⁴ <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-endrewcase-12-07-2017.pdf>

¹⁵ <https://www2.ed.gov/about/offices/list/ocr/504faq.html>