



# DIRECTIONS

*Technology in Special Education*

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## Understanding the Differences Between IDEA and Section 504

By Laurie U. deBettencourt

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What should I do if a student has difficulty in my classroom?  
Does the student have a disability? Is it specified in IDEA?  
Does the student have a mental or physical impairment that affects a major life function?  
What is Section 504, anyway?  
Who is the Section 504 official in my school or district?  
What is a FAPE?  
What forms do I need to fill out?  
When can a student be reevaluated?

Teachers should ask themselves questions like these to determine how to help students who are having difficulty in their classrooms. All teachers must understand the provisions of two major laws-the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973-and what similarities and differences exist (Cohen, 1997; Roberts & Mather, 1995).

Both general and special education teachers need to know the most appropriate law applicable for students having difficulty in their classrooms. (See Figure 1 for flowchart of questions; and see Figure 2 for a helpful self-quiz.) This article provides information on these two laws and answers many questions that teachers have.

### Overview of IDEA and Section 504

IDEA is a federal law that governs all special education services in the United States. IDEA provides some federal funding to state and local education agencies to guarantee special education and related services for



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those students who meet the criteria for eligibility in a number of distinct categories of disability, each of which has its own criteria.

In contrast, Section 504 is a civil rights statute, rather than a federal, programmatic statute; and thus, the federal government does not provide additional funding for students identified. Section 504 requires that schools, public or private, who receive federal financial assistance for educational purposes, not discriminate against children with "handicaps" (i.e., disabilities). Schools must provide these students with reasonable accommodations comparable to those provided to their peers under the rulings of Section 504. Although not a financing statute, Section 504 does provide for enforcement of the mandate. If schools are found by the Office of Civil Rights to be out of compliance with Section 504, their federal financing may be removed (Roberts & Mather, 1995).

The criteria for identification, eligibility, appropriate education, least restrictive environment, and due process procedures under IDEA and Section 504 are somewhat different, as described in the following sections.

### Identification

Under the IDEA guidelines, school districts are required to identify and evaluate children suspected of having a disability. Such "child find" activities should be publicized. This requirement extends beyond the children receiving services in the public schools; it also includes students who reside in the school district but do not attend the public schools. The official comment to the regulations states that the "child

find" obligation includes *all* children with disabilities, including children attending private schools (see <http://www.ideapractices.org>).

Many school districts use a parental handbook (i.e., packet of information given to parents the first day of school) as a method for identification of students in need of services. Handbooks distributed to families at the beginning of the school year might include information about many school procedures, for example: (a) snow day procedures, (b) hot lunch menus, and (c) information about what to do if your child has difficulties in school.

Section 504 does require school district personnel to identify and locate students within their school district suspected of having a disability who attend public schools, private schools, or state agencies. (See Table 1 for differences in identification.)

### Eligibility

For a child to be eligible for services under IDEA, the child must meet the criteria for eligibility in one or more of 13 categories of disabilities identified in the law. Alternatively, at the discretion of the state and the LEA, a child ages 3 through 9 may be found eligible if he or she is experiencing development delays in one or more of the areas specified below and, by reason thereof, needs specified education and related services. The areas of developmental delay are: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and by reason thereof needs special education and related services. The 13 categories of

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disabilities identified in the law are:

1. Autism
2. Specific learning disability
3. Speech or language impairments
4. Emotional disturbance
5. Traumatic brain injury
6. Visual impairment
7. Hearing impairment
8. Deafness
9. Mental retardation
10. Deaf-blindness
11. Multiple disabilities
12. Orthopedic impairment
13. Other health impairment

Each category has specific criteria specifying the presence of the disabling condition; in addition, the disabling condition must adversely affect the student's educational performance. Schools often use failure as the criterion for "adversely affecting educational performance."

Attention deficit/hyperactivity disorder (ADD/ADHD) is not a discrete category under IDEA; however, a student with ADD or ADHD may be served under IDEA if one of the following applies:

\*His or her ADD/ADHD causes the child to have learning or emotional disabilities and he or she meets the criteria under the category of learning disabilities or emotional disturbance.

\*The student meets the criteria for "other health impaired" (OHI); that is, his limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli results in limited alertness with respect to the educational environment, that adversely affects his educational performance (Reid & Katsiyannis, 1995). Each state varies somewhat in

its specific criteria for eligibility for OHI.

To be eligible for services under Section 504, the existence of an identified physical or mental condition (e.g., asthma) must substantially limit a major life activity. Major life activities include the following: walking, seeing, hearing, speaking, breathing, learning, working, and caring for oneself. It is up to the school district to determine whether a particular impairment "substantially limits" a major life activity. The definition for eligibility used by most school districts is broader under Section 504 in comparison to IDEA.

### Evaluation

Specific procedures are required for a student to be evaluated for possible services under IDEA and Section 504. Under IDEA, a full comprehensive evaluation is required, assessing all areas related to the suspected disability. Testing must be multidisciplinary, nondiscriminatory, and at no cost to the parents. A reevaluation of each child is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every 3 years. The parents must be involved and give informed consent before the school conducts an initial evaluation. In addition, IDEA provides for independent educational evaluation at the school district's expense if parents disagree with evaluation obtained by the school. In some cases, due process hearing officers have found that school district evaluations were appropriate and that the parents had to bear the cost of the independent educational evaluation.

Under Section 504, a student must be

identified through evaluation procedures that gather information from a variety of sources. Decisions about the student, evaluation data, and placement options need to be made by knowledgeable individuals. Such assessment decisions do not require written consent of the parents, only notice to the parents; however, good professional practice indicates use of informed consent. Section 504 does require "periodic" reevaluations, and a reevaluation is required before a "significant" change in placement takes place. There is no provision in place that allows for independent evaluation at the school district's expense. (See Table 2 for differences between IDEA and Section 504 in Evaluation.)

### Appropriate Education

Under the regulations of IDEA, school districts are required to provide a FAPE to children identified as having a disability and meeting the specific criteria of the 13 distinct categories. "Appropriate education" means a program designed to provide "educational benefit." When identified, the student is entitled to an individualized education program (IEP), which must include the following (from [www.ideapractices.org](http://www.ideapractices.org) under Subpart C Services Section 300.347 that gives the content of the IEP):

\*A statement of the child's present levels of educational performance, including measurable annual goals and benchmarks or short-term objectives.

\*A statement of the special education and related services and supplementary aids and services to be provided to the child.

\*An explanation of the extent, if any, to

which the child will not participate with children in the general education class.

\*A statement of any individual modifications in the administration of statewide or districtwide assessments of student achievement that are needed for the child to participate in the assessment; and if the IEP team determines that the child will not participate in a particular statewide or districtwide assessment of student achievement (or part of an assessment a statement of why that assessment is not appropriate for the child; and how the child will be assessed.

\*The projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications.

\*A statement of how the child's progress toward the annual goals will be measured.

\*How the child's parents will be regularly informed (through such means as periodic report cards).

\*For each student with a disability, beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).

Public school officials must initiate and conduct IEP meetings periodically, but at least once every 12 months, to review each child's IEP, to determine whether the annual goals for the child

are being achieved, and to revise the IEP, as appropriate.

Although the public school is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting.

Specific participants are required to be present at the IEP meeting. The IEP team for each child with a disability should include the following:

\*The parents of the child.

\*At least one general education teacher of the child (if the child is, or may be, participating in the general education environment).

\*At least one special education teacher of the child, or if appropriate, at least one special education provider of the child.

\*A representative of the public school system who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general curriculum; and is knowledgeable about the availability of resources of the public agency.

\*A person who can interpret the instructional implications of evaluation results.

\*At the discretion of the parent or the agency, other people who have knowledge or special expertise regarding the child, including related services personnel, as appropriate.

\*If appropriate, the child.

The implementation of the IEP may take place within special education classrooms or within general education classrooms or a combination of both. Related services are provided at no additional cost for the family if students require them to benefit from specially designed instruction outlined in the IEP. Related services may include speech and language therapy, occupational therapy, physical therapy, counseling services, psychological services, social services, and transportation.

Under Section 504, an "appropriate" education means an education comparable to that provided to students without disabilities. The school district personnel are responsible to develop a Section 504 plan. Although the written document is not mandated, it is recommended. The IEP form may be used for the Section 504 plan, but many schools use a different form for the Section 504 accommodation plan (see Conderman & Katsiyannis, 1995). There are no specific requirements concerning parental participation or frequency of review. Students served under Section 504 can receive specialized instruction, related services, or accommodations within the general education classroom. Contrary to popular belief, Section 504 is not limited to general education-based services or modifications of general education programs. (See Table 3 for differences in responsibility to provide appropriate education.)

### **Least Restrictive Environment**

Both IDEA and Section 504 require that services for students with disabilities be provided within the least

restrictive environment. The least restrictive environment refers to the provision that students with disabilities be educated to the maximum extent appropriate with students who do not have disabilities. IDEA is more explicit in this provision than Section 504.

Under Section 504, there are no limits on the services provided (e.g., counseling and speech both may be included), or where the services may be provided (e.g., in the general education classroom or the special education classroom). Section 504, however, requires that programs and services be accessible to students with disabilities.

### Due Process

The due process procedural safeguards under IDEA include that the parents have the right to

\*Consent to initial evaluation and services.

\*Participate in all IEP meetings to discuss their child's program.

\*Be informed by written notice of changes the school district proposes in placement or services of their child.

\*Request an independent evaluation and an impartial due process hearing.

\*Be notified of the results of the hearing within 10 days by an independent hearing officer or counsel, and receive a written decision or taped transcript.

If parents are unhappy with the school district's decisions, they may file a complaint with their state department or with the Office of Special

Education within the U.S. Department of Education.

Under the regulations of Section 504, parents have the right to

\*Be notified that the school is proposing or stopping services for their child.

\*Review their child's records.

\*Ask for an impartial hearing and review process.

The regulations do not specify a time-line requirement. If parents are unhappy with the school district's decisions, they may request an impartial due process hearing with the school district; or they may file a complaint with the U.S. Department of Education's Office for Civil Rights for violation of Section 504. (See Table 4 for Due Process Differences.)

### Synthesis of Differences

The major differences between IDEA and Section 504 are in the flexibility of the procedures. For children to be identified as eligible for services under Section 504, there are less specific procedural criteria governing the requirements of the school personnel. Schools may offer less assistance and monitoring with Section 504 because there are fewer regulations by the federal government instructing them, especially in terms of compliance.

In contrast, students identified for services under IDEA must meet specific criteria; and the degree of regulation is more specific in terms of time-frames, parental participation, and formal paperwork requirements. In addition, IDEA speaks to special education of students with disabilities from preschool to graduation only (ages 3-21). Section 504 covers the lifespan and safeguards the

rights of persons with disabilities in many areas of their lives, including employment, public access to buildings, transportation, and education.

### Implications for Teachers and Administrators

General education teachers need to be aware of the differences between the IDEA regulations and Section 504. Because there are more and more identified children with attention-deficit disorder, communication diseases, and medical conditions (e.g., arthritis, AIDS, cancer) who are served in schools today, teachers need to know if these children are entitled to Section 504 or IDEA services. Students who are temporarily disabled also might be entitled to Section 504 services and an accommodation plan.

Students who are ineligible for services under the IDEA or are no longer entitled to services under IDEA (e.g., students with learning disabilities who no longer meet IDEA eligibility criteria) may be entitled to accommodations under Section 504. General and special education teachers need to understand the differences. Table 5 lists several basic suggestions for teachers.

### Implications for Preservice Teacher Preparation

As university faculty continue to train teachers in the legal requirements of IDEA and Section 504, they should emphasize not only

# EROD -

## Education Resource Organizations Directory

If you haven't visited the U.S. Department of Education's web page, My.ED.gov, you are missing a wealth of information geared to assist individuals, families, teachers, and administrators in all aspects of the educational process. If you are familiar with the site, but haven't stopped by lately, you will be pleasantly surprised at the resources that are now available, as well as the new user-friendly format. Besides offering a new and improved search capability, My.ED.gov has taken the information and resources provided and broken them down into several key sections. The first is done in categories, the principal ones being:

**Grants and contracts**  
**Financial aid for students**  
**Education resources**  
**Research and statistics**  
**Policy**

Each category offers a concise overview of its purpose, a list of news articles, and links to information within the area. As well as the five main categories, My.ED.gov offers still more. One of the best resources the site offers, is the EROD (Education Resource Organization Directory). At the bottom of the ED page, you will see a link to *Education Associations and Organizations*. The first resource listed is the EROD. As stated, 'the Directory is intended to help you identify and contact organizations that provide information and assistance on a broad range of education-related topics.' The EROD provides difference search methods depending on the information you have

available, as well as the ability to search for organizations by state or territory. The EROD also provides a list of organization types to help you identify areas that you need to access by state or region.

Determining whether or not the EROD can aid in your exploration of resources available is made easy by going to 'What's in This Directory for Me?'. This page gives a summary of how the EROD provides valuable information for the teacher, librarian, researcher, and student. You will also find a list of the kinds of organizations you can expect to find. The EROD includes ... 'thousands of organizations that provide services on a state, regional, or national level'. A few examples are:

- \*Disability and Business Technical Assistance Center
- \*Parent Resource Center
- \*State Director of Children with Special Health Needs
- \*State Parent Training and Information Center (Disabilities)
- \*U.S. Federal Departments

A list of all searchable fields of information for each organization in the directory is listed as well. If you represent an organization that would like to be listed with the EROD, there is a 'Criteria for Inclusion' that you can access. Organizations that will be considered for entry will meet the following conditions:

\*The organization produces, disseminates, and/or provides access to education-related information.

\*The organization's services and/or products are available to those outside the primary client group of the organization, for free or for fee, remotely or on-site. (For-profit organizations working in areas in which there is little not-for-profit activity will also be considered for inclusion in the Directory.)

\*The organization agrees to respond to requests for information sent remotely (e.g., by e-mail, fax, phone, and/or mail).

\*The organization agrees to provide services and/or products to all individuals without regard to race, color, creed, gender, or sexual orientation.

\*The organization agrees to review its EROD entry at least once annually in order to continue to be included in the EROD.

If these conditions can be met, you can then access the '*Data Collection Form*'. This form is to be used 'to submit updates or corrections to the information about your organization in the Education Resource Organizations Directory (EROD), or to suggest your organization for addition to EROD.' As with most forms of its kind, only those items listed in **BOLD** are required. The form is broken down into Location Information; Contact Information; Operating Information; Indexing Information; and Personal Information. The EROD is a fundamental resource for the education community. We urge you to visit [www.My.ED.gov](http://www.My.ED.gov), and particularly [www.ED.gov/Programs/EROD](http://www.ED.gov/Programs/EROD), and examine all that they offer!§

Continued from page 5

the provisions of each, but also the distinctions between them. Frequently preservice and inservice teachers complete their training programs with minimal understanding of the provisions of IDEA and less awareness of Section 504. Indeed, in many college-level assessment or legal-issues classes, instructors mention Section 504, but only with a brief introduction. We are doing a disservice to these teachers by not including in their preparation a clear understanding of the differences between Section 504 and IDEA.

Teachers and administrators need to understand the applicability of Section 504 to the everyday activities at the school level. Currently, the public schools are serving more and more children with attention-deficit disorders and children with learning disabilities. With the increase in numbers of students with these disabilities, the

understanding of Section 504 and its distinguishing provisions is critical to practicing general and special education teachers and administrators.

### Final Thoughts

For some students, provision of appropriate modifications and accommodations is the only way they will be successful in their school experiences. We need to understand the provisions of both IDEA and Section 504 so that we can be better prepared to identify and serve students in our schools.

Laurie U. deBettencourt, Associate Professor, School of Continuing and Professional Studies, University of Virginia, Northern Virginia Center, Falls Church. §

*If you would like a copy of the tables and figures mentioned in this article, or would like to see the list of references, please contact Dreamms for Kids, Inc.*

## Conferences

### Date: April 3-6, 2002 Council for Exceptional Children's Annual Convention and Expo

New York, NY

Contact Information:

Council for Exceptional Children  
1110 N. Glebe Road, Suite 300  
Arlington, VA 22201-5704  
Phone: 888-232-7733

Web site: [www.cec.sped.org](http://www.cec.sped.org)

### Date: October 17-19, 2002 20th Annual Closing the Gap: Computer Technology in Special Education and Rehabilitation

Contact Information:

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Henderson, MN 56044

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special thank you to.....*

*The Spurlino Foundation  
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*Without their help this publication  
wouldn't exist!*

*God Bless...*

## A Note From RJ Cooper

## HalfthePlanet News

I pride myself on finding unique things for persons with 'different' abilities and I've found another one. This one is a special mouse-pad sheet that you can print directly to, from any inkjet printer. It's way cool. You can make custom mousepads for your learner/user, or a learner/user can make mousepads for parents/others, or both you and your learner/user can make presents for others, etc. Check it out by going to: <http://www.rjcooper.com/create-a-pad>

I also just discovered this great new 'gadget' for moving files between computers, \*easily\*, and I find it of great value. Maybe you will also? Go to: <http://www.rjcooper.com/usbdrive>. Secondly, because the price of the higher capacity drives get so expensive, I am carrying another, equally fabulous, portable USB drive, with 20 Gigs of storage (yes, you read correctly!)

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National Cristina Foundation (NCF) provides computer technology and solutions to give people with disabilities, students at risk and economically disadvantaged persons the opportunity, through training, to lead more independent and productive lives. To learn more about NCF's work, including how your organization can donate used computer equipment, and to read their online magazine, Cristina Connections, go to <http://www.cristina.org/>.

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[www.halftheplanet.org](http://www.halftheplanet.org), HalfthePlanet Foundation will receive a portion of the proceeds from your sale. This is a “must have” for anyone working on housing accessibility issues or working in the housing industry. For more information about the CD-ROM, a free demonstration and how to order, go to [http://www.halftheplanet.org/departments/new\\_content/sourcability.html](http://www.halftheplanet.org/departments/new_content/sourcability.html).

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