

SECTION 504 vs. IDEA

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A note about these materials....

- The following slides are meant as brief summaries of what are sometimes very extensive rules and duties.
- The slides do not address all of the legal requirements under either law, but are meant to highlight differences in approach.
- The slides are not legal advice. Consult a licensed attorney for questions about a specific set of facts.

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What was Congress thinking?

§504	IDEA
Not focused specifically on public schools, but on disability discrimination by recipients of federal funds.	Focused on public schools, concerned with two problems: exclusion & inappropriate services/funds for disabled students.

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So how would you distinguish the two?

§504	IDEA
A civil rights law.	An entitlement law.

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Why does that distinction matter?

§504	IDEA
504 compares the student at issue with nondisabled peers, seeking equal opportunity to participate and benefit.	IDEA isn't concerned about what others get, focuses on educational benefit for <i>this</i> child.

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Why does that distinction matter?

§504	IDEA
NO funding for civil rights statutes.	NOT ENOUGH funding for entitlement statutes.

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How is eligibility determined?

§504	IDEA
Student must be both “qualified” & have a physical or mental impairment that substantially limits one or more major life activities.	Student must be both disabled and in need of special education and related services.

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Is there a list of impairments that give rise to eligibility?

§504	IDEA
Impairments are not listed, because of “the difficulty of ensuring the comprehensive of any such list.”	The impairment must fit one of the 14 IDEA-recognized disabling conditions

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In 504, what does physical or mental impairment include? 34 C.F.R. §104.3(j)(2)(i).

Physical or Mental Impairment means

(A) “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

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In IDEA, what are the recognized disabling conditions?

- Autism,
- Deaf-blindness
- Hearing Impairment
- Auditory Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Emotional Disturbance
- Learning Disability
- Speech Language Impairment
- Traumatic Brain Injury
- Visual Impairment
- Developmental Delay (optional).

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Can an impairment qualify under §504 but not IDEA?

- Absolutely. It can happen in a couple of ways:
 - The impairment was not sufficiently severe or lacked the necessary impact under IDEA, but was substantially limiting under 504
 - The student did not require special education as a result of the impairment.

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What does Congress think about current levels of eligible folks?

§504	IDEA
ADAAA of 2008: Not enough folks are eligible, construe eligibility language more broadly.	IDEA 2004: Too many kids are eligible (giving fuel to RTI).

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What types of evaluation data are required?

§504

Common sources are grades, test scores, disciplinary referrals, parent input, and other data from a variety of sources

IDEA

More focused on assessment data and instruments, but utilizes cumulative folder data as well

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How are mitigating measures considered during evaluation?

§504

Positive effects of mitigating measures (like Rtl) must be "screened out" when determining whether student is substantially limited.

IDEA

If mitigating measures like Rtl adequately address the student's needs, he does not require special education.

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Who makes the decisions?

§504

A group of people knowledgeable about the child, the meaning of the evaluation data & placement options

IDEA

IEP Team, with members to include the parent, and a host of others designated by regulation

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What do eligible students get?

§504	IDEA
Nondiscrimination protection, a few procedural safeguards + <i>some eligible</i> students get the Section 504 FAPE.	Special education & related services, together with a host of procedural safeguards AND 504's nondiscrimination protection

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Do all eligible students get services?

§504	IDEA
recognizes students who are technically eligible: that is, students who are eligible, but do not need services from the school at this time.	Yes. By definition, the student must be in need of special education services in order to be eligible.

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What's the expectation with respect to grade-level curriculum?

§504	IDEA
§504 kids are expected to master it. No exceptions. Section 504 is not a statute of reduced expectations.	IDEA kids should be involved in and progress in the regular curriculum to the maximum extent appropriate to the needs of the child.

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Raised Expectations in IDEA '97

Commentary on §300.347(a)(3) (1999).

- "In order to ensure full access to the general curriculum, it is not necessary to amend Sec. 300.347(a)(3)(ii) to clarify that a child's involvement and progress in the general curriculum must be 'to the maximum extent appropriate to needs of the child.' The individualization of the IEP process, together with the new requirements related to the general curriculum, should ensure that such involvement and progress is 'to the maximum extent appropriate to the needs of the child.'"

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What types of services are possible?

§504

Accommodations + related services + adaptations to school policy/practice/procedure

IDEA

"Specially designed instruction" + intensive related services + accommodations + supplementary aids/services (potentially in special settings)

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Are there differences in FAPE? Yep.

§504

The Section 504 FAPE requires the school to meet the educational needs of the student with disability as adequately as it meets the needs of his nondisabled peers.

IDEA

The IDEA FAPE is a near-entitlement to educational benefit that will vary depending on the needs and abilities of the individual child.

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Does LRE apply? Yes.

§504	IDEA
Typically very easy to meet the LRE requirement as the student's educational needs will likely be addressed through services and accommodations made to regular classroom.	More difficult, as the district must have available a continuum of educational placements, and consider supplementary aids and services prior to a more restrictive placement.

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Any differences in procedural safeguards? Yep.

§504	IDEA
Notice, opportunity to examine relevant records, an impartial hearing, and a review procedure. §104.36	9 pages of single-spaced regulations in subpart E, together with a few other regs.

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Is parental consent required? Yep.

§504	IDEA
Not mentioned in the regulations , but OCR says consent required for initial evaluation & initial placement, and parents can revoke consent for continued services.	Required for initial evaluation and placement, as well as re-evaluation. Revocation for continued services possible.

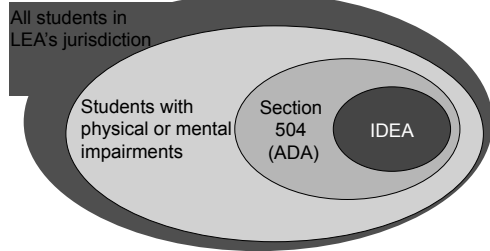
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Does manifestation determination apply? Yep.

§504	IDEA
MDR is based in nondiscrimination analysis and federal caselaw.	MDR is part of IDEA statute since 1997.

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How do IDEA & 504 fit together?



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**A little more background:
The paragraph we know as Section 504**

“No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

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