

# Basic Information about Federal Disability Laws

**21<sup>st</sup> Century Community Learning Centers  
Summer Symposium  
July 16, 2019**

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- ***This presentation provides general information and does not represent a complete recitation of the applicable law and policy in these areas. It does not address specific issues of compliance because determinations of compliance depend on specific facts and are made on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.***
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# Overview of Presentation

- IDEA
- Section 504
- Title II of the Americans with Disabilities Act
- Interaction of these laws

# IDEA and OSEP

The Office of Special Education Programs (OSEP) is dedicated to improving results for infants, toddlers, children and youth with disabilities ages **birth through 21** by providing leadership and financial support to assist states and local districts.

OSEP **administers** the Individuals with Disabilities Education Act (IDEA) which authorizes:

- **Formula grants** to States, and
- **Discretionary grants** to institutions of higher education and other nonprofit organizations to support research, demonstrations, technical assistance and dissemination, technology and personnel development and parent-training and information centers.

# IDEA

- The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7 million eligible infants, toddlers, children, and youth with disabilities.
- Eligible infants and toddlers, birth through age 2, with disabilities and their families receive **early intervention services** under IDEA **Part C**.
- Eligible children and youth aged 3 through 21, inclusive, receive **special education and related services** under IDEA **Part B**.

# IDEA (continued)

- Under Part B, each eligible child with a disability is entitled to FAPE.
- IDEA makes Federal funds available to States and through them to eligible local educational agencies to assist in making FAPE available to eligible children, and to ensure that IDEA's rights and protections are extended to eligible children and their parents.

# Child with a Disability

- *Child with a disability* means a child evaluated in accordance with the IDEA evaluation requirements as having one of the 13 disabilities listed in the IDEA,  
**AND**
- Who, by reason of that disability, needs special education and related services.
- The decision of whether a child who needs special education and related services because of disability is based on the evaluation data and the educational needs of the child.
- 20 U.S.C. 1401(3) and 1414(b)(4) and implementing regulations 34 C.F.R. §§ 300.8 and 300.306

# FAPE

FAPE under Part B of IDEA includes:

- The provision of special education and related services,
- At **no cost** to parents,
- Under public supervision and direction,
- In an appropriate preschool, elementary school, or secondary school program in the State involved,
- In conformity with an **individualized education program (IEP)**.
- Eligible children with disabilities receive FAPE in the least restrictive environment or LRE.

20 U.S.C. 1401(9) and 1412(a)(5) and implementing regulations at 34 C.F.R. §§ 300.17 and 300.114.

# IEPs

Include the special education and related services and supplementary aids and services, provided to the child to enable the child—

- To advance appropriately toward attaining the **annual goals**;
- To be involved in and make progress in the **general education curriculum**, and
- To be participate in **extracurricular** and other **nonacademic activities**, and
- To be educated and participate with other children with disabilities and nondisabled children in those activities.

20 U.S.C. 1414(d)(1)(A)(i)(IV) and implementing regulation 34 C.F.R. 300.320(a)(4).

# IEPs (continued)

- To meet its substantive obligation under the IDEA, a school must offer an IEP **reasonably calculated** to enable a child to make progress appropriate **in light of the child's circumstances**.
- Benefit must be **more than trivial**.
- Focus on individual needs of particular child
  - States responsibility to offer instruction “specially designed” to meet a child’s unique needs through the IEP

(Endrew F. v. Douglas County School District Re-1, 137 S. Ct. 988 (2017))

# IEP Team Meetings

- At the **beginning of each school year**, each public agency must have an IEP in effect for each child with a disability within its jurisdiction.
- The IEP is developed at a meeting of the child's IEP Team, which must review the child's IEP periodically, but **not less than annually**.
- **Parents** are required members of the IEP Team along with school officials.

20 U.S.C. 1414(d)(2)-(4) and implementing regulations 34 C.F.R. §§ 300.321 through 300.324.

# IDEA and Funding

Amounts provided to an LEA under Part B of the Act may be used only to pay the **excess costs** of providing special education and related services to children with disabilities.

- **Excess costs** are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA.

# IDEA and Funding (continued)

- Part B funds are awarded to States, which in turn distribute them to eligible LEAs based on a statutory formula.

1401(8) and implementing regulation 34 C.F.R. §§ 300.16; 20 U.S.C. 1411(f) and 300.705.

# Resources

- IDEA website: <https://sites.ed.gov/idea/>
- OSEP website:  
<http://www2.ed.gov/about/offices/list/osers/osep/index.html>
- OSEP State leads:  
<http://www2.ed.gov/policy/speced/guid/idea/monitor/state-contact-list.html>
- Discretionary initiatives: <https://www.osepideasthatwork.org/>
- Center for Parent Information and Resources:  
<http://www.parentcenterhub.org/>
- Questions and Answers (Q&A) on U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1  
<https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf>

# Introduction: Office for Civil Rights (OCR)

- Office within ED that enforces Federal civil rights laws in schools, including laws prohibiting discrimination based on race, color, national origin, sex, disability, or age.
- OCR's mission is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools.

# Introduction: OCR (continued)

- Headquarters in Washington, D.C.; 12 regional offices.
- Investigates/resolves complaints alleging discrimination; conducts OCR-initiated compliance reviews; and provides technical assistance.
- OCR's determinations of compliance depend on specific facts found and a case-by-case evaluation of those facts.

# Laws Enforced by OCR

- Title VI of the Civil Rights Act of 1964 (race, color, national origin)
- Title IX of the Education Amendments of 1972 (sex)
- Section 504 of the Rehabilitation Act of 1973 (disability)
- Title II of the Americans with Disabilities Act (disability)
- Age Discrimination Act of 1975 (age)
- Boy Scouts of America Equal Access Act (designated youth groups)

# Section 504 of the Rehabilitation Act of 1973

Section 504 prohibits disability discrimination against qualified individuals with disabilities by recipients of Federal financial assistance (FFA).

- Statute is not education-specific and applies to recipients of FFA from any Federal agency.
- ED/OCR has jurisdiction over recipients of FFA from ED.
  - When a recipient violates Section 504, OCR has enforcement authority to address the non-compliance.

29 U.S.C. § 794; ED/OCR implementing regulation at 34 C.F.R. Part 104.

# Title II of the Americans with Disabilities Act

Title II of the ADA prohibits disability discrimination against qualified individuals with disability by public entities, including public schools, school districts, public charter schools, and magnet schools, regardless of the receipt of Federal funds.

- Law is not education-specific and does not just apply to public schools.
- In elementary and secondary education, OCR shares enforcement authority of Title II of the ADA with the U.S. Department of Justice (DOJ).
- Violations of Section 504 are generally also violations of Title II.
- ED looks to DOJ's Title II regulation.

42 U.S.C. § 12131-12134; DOJ implementing regulation at 28 C.F.R. Part 35.

# Title III of the Americans with Disabilities Act

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation.

- Applies to certain private entities, including private schools.
  - Does not apply to religious entities.
  - Enforced by the U.S. Department of Justice.
  - OCR plays no role in enforcing Title III.
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- 42 U.S.C. §§ 12181 - 12189; DOJ implementing regulation at 28 C.F.R. Part 36

# Definition of Disability under Section 504 and the ADA

Person with a disability:

- Has a physical or mental impairment that substantially limits a major life activity;
- Has a record of such impairment; or
- Is regarded as having such an impairment.

Construed to provide broad coverage.

42 U.S.C. § 12102; 29 U.S.C. § 705(9)(B), (20)(B)

# Section 504 and Title II: Equal Opportunity

To comply with Section 504 and Title II, entities must not, among other things:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service
- Afford a qualified individual with an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others
- Provide a qualified individual with an aid, benefit, or service that is not as effective as that provided to others

# Section 504 and Title II: Equal Opportunity (continued)

- Provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others

# Section 504 and Title II: Examples

Examples of prohibited discrimination under both Section 504 and Title II may include:

- Failure to provide an equal opportunity to participate in non-academic and extracurricular activities to an elementary or secondary student with a disability
- Failure to provide appropriate academic adjustments to a qualified college student with a disability
- Denying the benefits of a program or activity because a school's facilities are inaccessible to persons with mobility impairments

# Free Appropriate Public Education under Section 504

Provision of FAPE under Section 504 includes requirements to:

- (1) provide a student with a disability regular or special education and related aids and services that are designed to meet the student's individual educational needs as adequately as the needs of students without disabilities are met; and
- (2) comply with Section 504 requirements pertaining to evaluation and placement, educational setting, and procedural safeguards.

Implementation of an individualized education program (IEP) developed in accordance with the IDEA is one means of meeting the first standard.

# Section 504/Title II v. IDEA

- IDEA is a federal law that funds state and local special education programs and attaches specific eligibility requirements to the receipt of those funds.
- IDEA is administered by ED's Office of Special Education Programs.
- Different definitions of disability and child with a disability.
- Different definitions of FAPE

# Section 504/Title II v. IDEA (continued)

- Elementary and secondary students with a disability who are not eligible for services under IDEA may nonetheless be eligible for protection (and for services) under Section 504.
- Many elementary and secondary students with disabilities are protected under both IDEA and Section 504/Title II, and districts may comply with certain 504 requirements for students by following IDEA procedures.
- OCR enforces the Section 504 and Title II rights of students with disabilities, including students with disabilities who are IDEA-eligible.
- OCR does not enforce the IDEA.

# OCR Contact information

- To learn more about OCR and our civil rights enforcement work, please visit our website at [www.ed.gov/ocr](http://www.ed.gov/ocr).
- To file a complaint or request technical assistance, please find your local OCR enforcement office at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.