

## THE DIFFERENCES IN LEGAL RIGHTS AND RESPONSIBILITIES IN SECONDARY AND POSTSECONDARY EDUCATION

|                                       | <b>K-12 Education</b>  | <b>Postsecondary Education</b>  | <b>Practical Application</b>   |
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| <b>What is the law?</b>               | <p><b>IDEA:</b> Individuals with Disabilities Education Act</p> <p><b>504:</b> Section 504 of the Rehabilitation Act of 1973</p> <p><b>ADA:</b> Americans with Disabilities Act of 1990.</p>   | <p><b>504:</b> Section 504 of the Rehabilitation Act of 1973, particular reference to Subpart E</p> <p><b>ADA:</b> Americans with Disabilities Act of 1990.</p>   | <p><b>Section 504(e) and ADA are not about special education services, they are about nondiscrimination and access for eligible individuals with Disabilities.</b></p>   |
| <b>What is the intent of the law?</b> | <p><b>IDEA:</b> To provide a free, appropriate public education in the least restrictive environment to identified students with disabilities, including special education and related services</p> <p><b>504/ADA:</b> To ensure that no otherwise qualified person with a disability is denied access to, benefits of, or is subject to discrimination solely on the basis of disability.</p>                       | <p><b>504/ADA:</b> To ensure that no otherwise qualified person with a disability is denied access to benefits</p>  | <p><b>IDEA meets the specific special education needs of the student and modifies the program accordingly. 504(e) and ADA allow eligible individuals with disabilities the same access to programs, activities and services as their non-disabled peers.</b></p> |
| <b>Who is covered under the law?</b>  | <p><b>IDEA:</b> All children and youth requiring special education services until age 21 or graduation from high school.</p>   | <p><b>504/ADA:</b> All qualified persons with disabilities who, with or without reasonable accommodations, meet the college's admissions requirements and the specific entry-level criteria for the specific program and who can document the existence of a disability as defined by Section 504.</p>  | <p><b>Not every student who received special education services under IDEA will be qualified individual with a disability under 504(e) or ADA. And once admitted, not every request for accommodation will be deemed to be reasonable.</b></p>                   |
| <b>What is a disability?</b>          | <p><b>IDEA:</b> A list of 13 disability classification areas are defined in IDEA and include specific learning disabilities. <b>504/ADA</b> have no such list. A person with a disability is defined as anyone who has: (1) any physical or mental impairment which substantially limits one or more major life functions; (2) a history of such an impairment; (3) or is regarded as having such an impairment.</p> | <p><b>504/ADA:</b> A person with a disability is defined as anyone who has: (1) any physical or mental impairment which substantially limits one or more major life functions (2) a history of such an impairment (3) is regarded as having such an impairment. <b>ADA</b> also includes HIV status and contagious and non-contagious diseases.</p> | <p><b>An emotional disturbance label, under IDEA, may or may not result in a diagnosis of a mental impairment, severe enough to qualify as a disability.</b></p>   |

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| <p><b>Who is responsible for identifying And documenting need?</b></p> | <p>School districts are responsible for identifying and evaluating potential students with disabilities. When such a determination is made, the district plans educational services for classified students at no expense to the family.</p>   | <p>Students are responsible for self-identification and for obtaining disability documentation from a professional who is qualified to assess their particular disability; cost of the evaluation must be assumed by the student, not the post-secondary institution.</p>   | <p><b>Just because documentation is sent on behalf of students does not mean the students will receive services without the student coming in to specifically request them.</b></p> |
| <p><b>Who is responsible for initiating service delivery?</b></p>      | <p>School districts are responsible for identifying students with disabilities and providing special education programs and services, including related services, and transition services as delineated in an individualized Education Program.</p>  | <p>Students are responsible for notifying the Disability Support Services staff of their disability and of their need for reasonable accommodations. Accommodations (<b>not special education</b>) are provided on a case-by-case, as-needed basis in order for students with disabilities to have equal access to the institution’s programs and activities.</p>                                       | <p><b>Students must request accommodations in a timely manner. Resource rooms are not a typical service in college.</b></p>   |
| <p><b>Who is responsible for enforcing the law?</b></p>                | <p><b>IDEA</b> is an entitlement law, enforced by the Office of Special Education and Rehabilitation Services in the U.S. Department of Education. Local enforcement is the responsibility of the NYS Department of Education Office of <b>Vocational and Educational Services for Individuals with Disabilities (VESID)</b></p> | <p><b>504/ADA:</b> are civil rights statues overseen by the <b>Office of Civil Rights (OCR)</b>, and the US Department of Justice in conjunction with the <b>Equal Employment Commission (EEOC)</b>.</p>  |   |
| <p><b>What about advocacy?</b></p>                                     | <p>The parent or guardian is the primary advocate. Students with disabilities from age 14 on must be invited to participate in the IEP process. If the student does not attend, the district must ensure that the student’s preferences and interest are considered.</p>   | <p>Students must be able to self identify and discuss their disability and needs in order to work with the Disability Support <b>staff</b> to implement reasonable accommodations. <b>The Family Educational Rights Privacy Act (FERPA) guarantees student confidentiality. Conversations with parents regarding confidential information without written consent from the student are illegal.</b></p> | <p><b>Students must become self-advocates at the college level.</b></p>   |