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# DIFFERENCES AMONG THE IDEA, SEC. 504, AND THE ADA-AA

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## What is the purpose?

IDEA (2004)	Sec. 504 (1974)	ADA (2008)
<p>An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities.</p>	<p>A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.</p>	<p>A civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, and accommodations.</p>

## What is the Definition?

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IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>The Individuals with Disabilities Education Act (<b>IDEA</b>) is a four part (A-D) piece of American legislation that ensures students with a disability are provided with Free Appropriate Public Education (FAPE) that is tailored to their individual needs.</p>	<p>A civil rights law that provides persons with disabilities to the greatest extent possible an opportunity to fully participate with their peers.</p>	<p>It broadens the scope of coverage under <b>both</b> the ADA and Section 504 of the Rehabilitation Act.</p> <ol style="list-style-type: none"><li>1. With a physical or mental impairment that substantially limits one or more major life activities;</li><li>2. Who has a record of such an impairment; or</li><li>3. Who is regarded as having such impairment.</li></ol>

## Who is protected?

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>Children ages 3-21 who are determined by a multidisciplinary team to be eligible within one or more of 13 specific disability categories and who need special education and related services.</p>	<p>Any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment.</p>	<p>Any individual with a disability who: (1) has a physical or mental impairment that substantially limits one or more life activities; or (2) has a record of such impairment; or (3) is regarded as having such an impairment.</p> <p>Further, the person must be qualified for the program, service, or job.</p>

## What are the categories?

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>Categories 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</p>	<p>Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.</p>	<p>Major life activities” include but not limited to—caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working” and “operation of major bodily functions” is a “major life activity,” including but not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions..</p>

## Must FAPE be provided?

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>Yes. A FAPE is defined to mean special education and related services. Special education means "specially designed instruction at no cost to the parents, to meet the unique needs of the child with a disability.."</p>	<p>Yes. An "appropriate" education means an education comparable to that provided to students without disabilities. This may be defined as regular or special education services. Students can receive related services under Section 504 even if they are not provided any special education. Section 504 does require development of a plan, although this written document is not mandated. The Individualized Education Program (IEP) of IDEA may be used for the Section 504 written plan. Many experts recommend that a group of persons knowledgeable about the students convene and specify the agreed-upon services.</p>	<p>Not directly. However, (1) ADA protections apply to nonsectarian private schools, but not to organization or private schools, or entities controlled by religious organization; (2) ADA provided additional protection in combination with actions brought under Section 504. Reasonable accommodations are required for eligible students with a disability to perform essential functions of the job. This applies to any part of the special education program that may be community-based and involve job training/placement.</p>

## Related Services?

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>Related services are provided if students, require them in order to benefit from specially designed instruction. States are required to ensure the provision of "full educational opportunity" to all children with disabilities.</p> <p>IDEA requires the development of an Individualized Education Program (IEP) document with specific content and a required number of participants at an IEP meeting.</p>	<p>Required schools to eliminate barriers that would prevent the student from participating fully in the programs and services offered in the general curriculum.</p> <p>No IEP or written program is required</p>	<p>Reasonable accommodations include: telecommuting, working from home and using a modified work schedule, as well as measures such as making existing facilities accessible, acquiring or modifying equipment, providing qualified readers or interpreters, reassigning the employee to a vacant position, and changing tests, training materials and/or policies.</p>

# implement services?

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>Yes. IDEA provides federal funds under Parts B and C to assist states and local education agencies in meeting IDEA requirements to serve infants, toddlers and youth with disabilities.</p>	<p>No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible under Section 504. Unless there is space available and the student does not change the dynamics.</p>	<p>No, but limited tax credits may be available for removing architectural or transportation barriers. Also, many federal agencies provide grant funds to support training and to provide technical assistance to public and private institutions.</p>



# Procedural safeguards

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>IDEA requires written notice to parents regarding identification, evaluation, and/or placement.</p> <p>Further, written notice must be made prior to any change in placement. The Act delineates the required components of the written notices.</p>	<p>Section 504 requires notice to parents regarding identification, evaluation and/or placements. Written notice is recommended. Notice must be made only before a "significant change" in placement. Following IDEA procedural safeguards is one way to comply with Section 504 mandates.</p>	<p>The ADA does not specify procedural safeguards related to special education; it does detail the administrative requirements complaint procedures, and consequences for noncompliance related to both services and employment.</p>

# Placement

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>A comprehensive evaluation is required. A multidisciplinary team evaluates the child, and parental consent is required before evaluation.</p> <p>IDEA requires that reevaluations be conducted at least every 3 years. For evaluation and placement decisions, IDEA requires that more than one single procedure or information source be used; that information from all sources be documented and carefully considered; that the eligibility decision be made by a group of persons who know about the student, the evaluation data, and placement options; and that the placement decision serves the student in the least restrictive environment.</p> <p>An IEP meeting is required before any change in placement.</p>	<p>Section 504 requires only notice, not consent, for evaluation. It is recommended that district obtain parental consent. Like IDEA evaluation and placement procedures under Section 504 require that information be obtained from a variety of sources of the area of concern; that all data are documented and considered; and that decisions are made by a group of persons knowledgeable about the student, evaluation data, and placement options. Section 504 requires that students be educated with their non-disabled peers to the maximum extent appropriate. Section 504 does not require a meeting for any change in placement.</p>	<p>The ADA does not specify evaluation and placement procedures: it does specify provision of reasonable accommodations for eligible activities and settings. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, modifying tests, redesigning services to accessibility locations, altering existing facilities, and building new facilities.</p>

# Process

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
<p>IDEA delineates specific requirements for local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a child.</p>	<p>Section 504 requires local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. It requires that parents have an opportunity to participate in the hearing process and to be represented by counsel. Beyond this, due process details are left to the discretion of the local education agency. It is recommended that districts develop policy guidelines and procedures.</p>	<p>The ADA does not delineate specific due process procedures. People with disabilities have the same remedies that are available under the Title VII of the Civil Rights Act of 1964, as amended in 1991. Thus, individuals who are discriminated against may file a complaint with the relevant federal agency or sue in federal court. Enforcement agencies encourage informal</p>

# Due Process

IDEA (2004)	Sec. 504 (1974)	ADAAA (2008)
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## Mitigating Measures

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### ADA

- *Sutton v. United Airlines*, mitigating measures were to be taken into account in determining whether a person was substantially limited in a major life activity.

### ADAAA

- Sutton is out!

## “Substantially Limits”

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- *Toyota Motor Mfg. of Kentucky v. Williams* : an impairment “substantially limits” a “major life activity” if it “prevents or severely restricts the individual” from performing the activity
- 534 U.S. 184, 198 (2002).
- “Substantially limits” must be interpreted consistently with the findings of the Act.

## Major Life Activity

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### ADA

- *Williams* case, the Supreme Court ruled that a “major life activity” must be an activity that is “of central importance to most people’s daily lives.” 534 U.S. 184

### ADAAA

- The ADAAA includes a non-exhaustive list of major life activities, such as seeing, hearing, eating, sleeping, walking, **learning and concentrating.**
- Plus, the operation of “major bodily functions, such as immune system, normal cell growth, and the endocrine system.

## Episodic Conditions

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### ADA

- Some lower courts have held that individuals must be limited in more than one major life activity

### ADAAA

- One is sufficient
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active  
”42 U.S.C. § 12102(4)(D)



## “Regarded as..”

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### ADA

- In the *Sutton* case, the Supreme Court established a very high requirement for an individual to show that he or she is substantially limited in working

### ADAAA

- Reinstates the approach in the 1987 case of *School Board of Nassau County v. Arline*, 480 U.S. 273.

# Higher Education

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## ADA

- Title III of the ADA requires that universities make reasonable modifications in their policies, unless the university can demonstrate that making such modifications would “fundamentally alter” the nature of the educational service being offered.

## ADAAA

- The same

## Points to remember

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- If you think there is a disability, you have an obligation to evaluate Locate, Identify and Evaluate
- Mitigating measures do not count!
- Clinical observation is as important as testing.
- There is no prohibition against having an IEP and a 504 plan simultaneously.
- Maintaining a “history” is very important
- This is about civil rights and equal access
- “Broad coverage” for the ADA-AA

## Questions?

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- Thank you so much for participating!

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