

Know Your Rights Forum
New Hampshire Partners in Health

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Laws that may apply

- Special Education
 - Federal – Individuals with Disabilities Education Act (IDEA)
 - State
 - Statutes and regulations
- Section 504/ADA

Specific SPED Laws

- Federal Statute 20 USC s 1400 et seq.
- Federal Regulations 34 CFR s 300.1 et seq.
- States have adopted their own statutes and regulations.
- May exceed federal requirements, but must be consistent and cannot go below.
- NH Statutes RSA 186-C
- NH regulations Ed 1100 et seq.

You need to know the laws

- Obtain them from a variety of sources
 - Book: New Hampshire Special Education Law Manual. www.nhedlaw.com
 - Website has links to most of them.
www.nhedlaw.com
 - NH Dept. of Education
 - United States Department of Education

Special Education

Purposes of the federal law:

1. Remedy exclusion of students with disabilities
2. Ensure appropriate public services were provided to them at no charge
3. Provide students and parents rights in the decision making process

Special Education

4. To provide special education and related services designed to meet the student's unique needs and provide access to the general curriculum.
5. To prepare students for employment and independent living.

Core Requirements

1. Free – at no charge to parent
 - Even if at private school by public agency
2. Appropriate services
 - individual, unique needs
3. Notice
4. Participation
5. Hearing to resolve disagreements and challenge decisions

FAPE

- Standard the all services have to meet is a Free and Appropriate Public Education (called FAPE).
- FAPE is meeting the student's individual, unique needs, but it is not the "best" education possible or maximizing the student's potential.
- FAPE is also not a minimal education. It is something in the middle.
- Most courts have found that "meaningful progress" is required in order to provide FAPE. The student's abilities are considered when determining progress.

Special Education Process

- 1) Referral
- 2) Evaluation
- 3) Eligibility
- 4) IEP
- 5) Placement

Referral

Child find obligations

- school districts have an affirmative obligation to identify refer and evaluate students that reside in their district ages 3 to 21.
- applies to all children “suspected of having a disability”
- Must develop a policy
- Must have in school and out of school procedures

Child Find

- School district must ensure all referrals go to IEP team for disposition.
- Some factors for referrals include, but are not limited to:
 - failing hearing or vision screening
 - Unsatisfactory performance on achievement tests or accountability measures
 - Multiple academic or behavioral warnings
 - Repeatedly failing subjects

Referral

- Anyone can make it
- If other than parent must notify parent referral was made
- Must convene a team meeting to make a decision about whether to evaluate the student to see if the student has a disability and if the student requires special education services as a result of that disability. Ed 1107.02(c).

Decision to go forward

The team must decide within 15 days if the concerns raised in the referral can be addressed using services available to all children, whether additional information is required and if additional testing is required. The team making this decision includes the parent. Ed 1102.28.

Parental role

- The school must give the parent written notice of what the team decided to do about the referral. Ed 1107.02.
- If the parent disagrees with the Team's decision, the parent may request due process, or the school and the parents can try mediation or neutral case evaluation to resolve the dispute. Ed 1107.02, Ed 1128.02, RSA 186-C:23-24

Next steps

- If the team determines further testing is required the school district must notify the parent and obtain the parent's written consent to conduct necessary evaluations. Ed 1107.02(d).
- If the parents agree, the process moves to the next step called the evaluation phase.

Evaluations

- Must be “full and individual”
- Must use a variety of assessment tools and strategies to gather information.
- Must assess in all areas related to the suspected disability.
- Evaluations must be comprehensive and identify all of the special education and related services needs.

Evaluations

- Must be performed by qualified examiners as defined in Ed 1107.04
- Must answer three questions for initial evaluation:
 - Need any additional info?
 - Present levels of performance and educational needs
 - Whether child needs special education and related services.

Evaluations

- Information provided to Team.
- Team can be IEP Team and “other qualified professionals as appropriate.” Ed. 1107.01
- Team must develop a written report with results of findings. Ed 1107.05.
- Evaluation process must be complete in 45 days.

Evaluations

- Parent can request independent evaluations
- Can do at any time and must be considered by Team.
- If want public funding must follow Ed 1107.03.

Eligibility

- Next step is for Team to decide if child eligible.
- Team must now include a teacher certified in the area of suspected disability
- If child not in school then an individual knowledgeable about the child from personal contact or another setting

Eligibility

To be eligible for services under the IDEA, a student must meet the two-part test set forth in regulations:

- (1) the student must be a "child with a disability;"
- (2) the student must require special education and related services as a result of the disability.

34 CFR 300.7.

Eligibility

- There are 13 categories of disability under the IDEA. Ed 1102.09
- Each has its own definitional requirements.
- Most of the 13 categories contain some requirement that the disability "adversely affect the child's educational performance."

Eligibility

- Possible ones for children with chronic health issues:
 - Hearing or visual impairment
 - Orthopedic impairment
 - Speech-language impairment
 - Traumatic brain injury
 - Other health impairment
 - Multiple disabilities
 - Developmental delay

OHI

- Having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness in the educational environment
- That is due to chronic or acute health problems, asthma, ADD/ADHD, diabetes, etc.

OHI

- Must adversely affect child's educational performance
- Remember too that still have to show needs special education

Eligibility

- When determining if a disability adversely affects education performance, courts have looked at whether the student would be able to do required classwork without specialized instruction.
- *Greenland Sch. Dist. v. Katie C. And Kevin T. v. Merrimack Valley Sch. Dist.*; *Yankton v. Schramm*, 93 F.3d 1369 (8th Cir 1996).

Eligibility

Specially designed instruction is:

adapting as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction" to address the unique needs of the child that result from the disability and to insure access of the child to the general curriculum so that he or she can meet the educational standards of the public agency that applies to all children.

34 CFR 300.26.

Eligibility

School districts must consider more than academic progress when looking at whether or not a child's disability adversely affects educational performance. Social and emotional difficulties must also be considered.

Next Steps

- If find eligible then off to IEP land
- If not can consider Section 504 plan
- Parent has right to challenge decision through dispute resolution.
- Parents must be informed of rights at each step of process.

IEPs

- Cornerstone of the IDEA
- Decisions made by a Team that includes parents.
- State and federal laws specify requirements of IEPs.
- State and federal laws specify members of the team.

IEP Requirements

An IEP is a package that must "target all the child's special needs whether they be academic, physical, emotional, or social."
Lenn v. Portland School Committee, 998 F.2d. 1083, 1086 (1st Cir. 1993).

IEP Requirements

- The focus for IEPs is enabling the student to be involved in and progress in the general curriculum.
- The general curriculum is the curriculum used by the local school district for all students.
- In most cases, the local school district curricula will be based on the New Hampshire Curriculum Frameworks.

IEP Requirements

Twelve specific requirements in state and federal law. Ed 1119, 34 CFR § 300.347. Some include:

- Levels of performance, strengths and weaknesses
- Goals and objectives
- Services provided
- When, where and by whom
- Transition
- Assessment tests

Implementation

- State law requires school district's to provide each teacher and service provider having responsibility for implementing an IEP with a copy of the complete IEP. Ed 1109.05.
- The school district must maintain written evidence documenting implementation of the IEP.
- Ed 1109.05.

IEP Disputes



- Parents may reject IEP in part or in full.
- 14 days
- Implied consent
- Mediation
- Due Process

Placement

- After IEP completed
- Placement must be able to implement IEP
- Decision made by Team with Parents
- Can be same as IEP Team or different
- Least Restrictive Environment
- Unilateral placements
- Stay put

Parental Rights

- Procedural and substantive
- At each step of the process
- Notice, participation and consent
- Transfer to student at age of majority

Ed 1125

- Notice
 - Parent shall be notified at least 14 days before school proposal to initiate or change or refusal to initiate or change the referral, evaluation, eligibility, IEP or placement, or provision of FAPE.
 - Ed 1125.03 and 34 CFR 300.503

Prior Written Notice

Must contain the following:

1. Description of the action proposed or refused.
2. Explanation of why the action is proposed or refused.
3. Description of any other options considered and why rejected.
4. Description of each evaluation, test, record or report used as basis for decision.

Prior Written Notice

5. A description of any other factors relevant to the decision.
6. Statement that there are procedural safeguards and where the parents may obtain them.
7. Sources for parents to contact to understand the protections

Consent

District must obtain informed written consent before:

1. Conducting an initial evaluation
2. The initial provision of services
3. Annual renewal of IEP and placement
4. Determining or changing disability classification.
5. Changing the nature or extent of services
6. Conducting a reevaluation

Consent

- Parents have 14 days to consent or not.
- If no response school district can implement proposed changes without consent on items 3-6 if reasonable measures have been taken to obtain consent made to or request due process. Ed 1125.04, 1125.06.

Consent

- If parent refuses school must initiate due process. Ed 1125.06
- Federal regs say due process can be used for initial evaluation or reevaluation. 34 CFR 300.505.

Participation

- Right to participate in each step of the process.
 - Evaluations, eligibility, IEP, placement
 - Notice of events to enable participation
 - Member of the Team. Ed 1109.03.

IEPs and other meetings

- Steps to ensure parent attends and afforded opportunity to participate
 - Schedule at a mutually convenient time
 - 10 days notice
 - Conference calls
- Notice of what will be discussed and who will be there so parent can be informed participant.
- Must take steps necessary to ensure parent understands what is going on at meeting, including interpreter.
- Ed 1109.05, 34 CFR 300.345.

Meetings

- Can have without parent if:
 - Unable to convince parent to attend
 - Evidence of efforts to convince
 - Phone calls
 - Letters
 - Visits to house

Enforcement

- Due process
- Complaint
- Mediation/Neutral case evaluation
- Court

Due process/Mediation

- Parent has the right to file complaints and resolve them by due process, mediation or complaint, not the child. 20 U.S.C § 1415(b)(6); 20 U.S.C § 1415(f).
- May file complaint over just about any disagreement in the process
- Have right to mediate anything can request due process or file complaint over.

Complaint Process

- New Hampshire Dept. of Education will investigate claims of IDEA violations.
- Unlike due process.
- Can order changes be made or services be provided
- Can order compensatory education.

Section 504/ADA

Federal Statutes and regulations

Compare

504/ADA

- Civil rights laws that prohibit discrimination based on disability.
- ADA applies to employers, public services and accommodations
- 504 applies to programs and activities that receive federal funds.

IDEA

- Civil rights/spending law that requires schools to provide services to students with disabilities

Compare

ADA	504	IDEA
<ul style="list-style-type: none">•Applies to public and non-parochial private schools•Title III includes private programs that are public accommodations	Applies to public and all private schools that receive federal funds	Applies to all public schools. Some requirements for private schools depending on involvement with students with disabilities

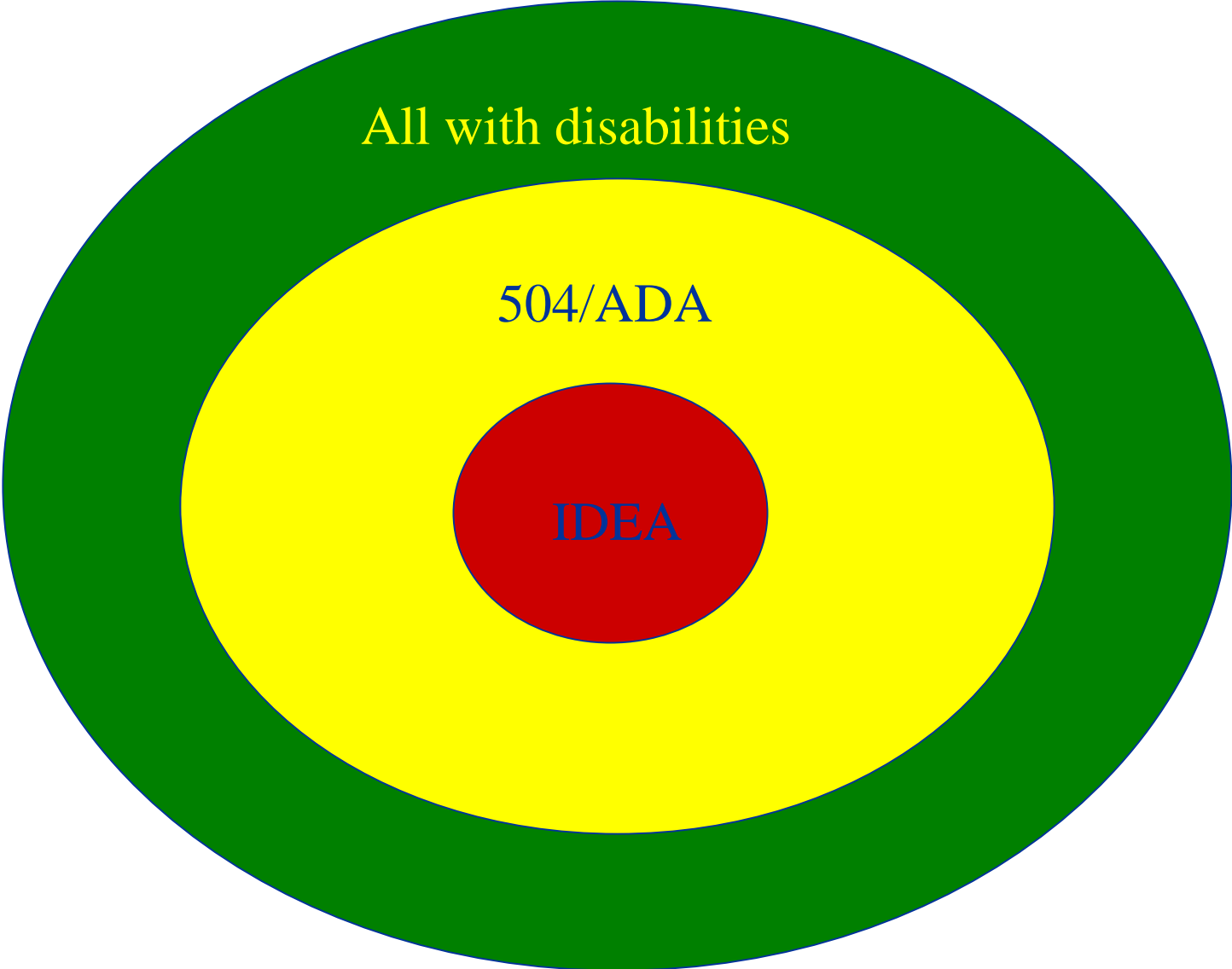
Eligible

504/ADA

- Eligible if have a physical or mental impairment that substantially limits a major life activity.
- Could be learning but does not have to be. Others include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working

IDEA

- Must be a child with a disability whose impairment affects education and who requires special education



All with disabilities

504/ADA

IDEA

Evaluations

504/ADA

- Must evaluate
- Similar to IDEA but not as stringent
- child find – must “undertake” efforts to identify and locate children. Sec. 104.33
- Must use valid tests by trained personnel
- Tailored to assess specific areas
- “periodic” reevaluation

Placement

ADA/504

- Placement based on tests
- Made by knowledgeable persons who understand that data.
- Could be team like IDEA but does not have to be.
- Must comply with Least Restrictive Environment requirements.

Mitigating factors

504/ADA

- Consider mitigating factors when assessing student.
- May not be eligible if do not meet the three requirements with mitigating factors

IDEA

- Unclear what role mitigating factors play.
- Can't force child to take medicine.

Services

504/ADA

- Generally modifications or accommodations
- Can also be special education or related services
- 504 plan does not have to be in writing but usually is and should be for best practice

IDEA

- Specially designed instruction to meet child's unique needs
- IEP

Services

- Accommodations and modifications must be appropriate.
- Some common accommodations include:
 - Modify assignments, and tests.
 - Provide an extra set of textbooks for home.
 - Adjust student seating.
 - Use study guides, organizing tools.
 - Provide a peer tutor/helper.

Accommodations

Common accommodations:

- Counseling.
- Have the student use an organizer-train in organizational skills.
- Preferential seating.
- Modify recess/PE/transportation.

Accommodations

- Accommodations need to take into account the functional limitations of the individual while trying not to jeopardize outcomes.
- Accommodations must be individualized.
- The individual needs of the person with a disability should be met to the same extent as the needs of persons without disabilities meaning they should try to place the student with a disability at an equal starting level with the non-disabled student.

FAPE

- Provision of regular or special education and related services that are designed to meet the individual needs of handicapped persons as adequately as the needs of non-handicapped are met
- Special education and related services to meet the child's unique needs and provide some educational benefit.

Rights

504/ADA

- Right to notice but not in writing
- Right to review records
- Right to hearing
- unclear how provided in NH
- No consent requirement
- No timelines

Enforcement

504/ADA

- OCR
- Can also go through local process – required by law to have a process.
- Court
- No exhaustion requirement but watch out of IDEA
- 180 days OCR
- 3 years court
- Money damages if bad faith or gross mismanagement or intentional discrimination or deliberate indifference

Wrap up

- At each step of the way try to work with and not against your school.
- At each step of the way know your rights and find out as much information as you can about the process and your options.
- If something doesn't sound right, it probably isn't
- Search for resources to answer questions and provide information.