



LPRO
LEGISLATIVE POLICY
AND RESEARCH OFFICE

Special Education: Background and Recent Developments

PREPARED FOR: Senate Education Committee

DATE: February 7, 2022

BY: Lisa Gezelter, Legislative Analyst

Relevant Federal Laws

Federal Laws

Section 504 of the Rehabilitation Act – enacted 1973

Individuals with Disabilities Education Act – enacted 1975, renamed in 1990

Americans With Disabilities Act – enacted 1990



Federal Laws: Definition/Eligibility

ADA	IDEA	Section 504
<p>A person who has a physical or mental impairment that substantially limits one or more major life activities</p> <p>A person who has a history or record of such an impairment, or</p> <p>A person who is perceived by others as having such an impairment.</p>	<p>A child ages three through 21 with one of twelve specific disabilities who needs specially designed instruction</p>	<p>Same as ADA</p>



Federal Laws: Documentation

ADA	IDEA	Section 504
No formal written documentation required.	Individualized Education Program that identifies the services the school will provide.	No documentation required; schools use written 504 plans to identify accommodations.



Federal Laws: Entitlement

ADA	IDEA	Section 504
Accommodations	Specially designed instruction and/or accommodations	Accommodations



Federal Laws: Setting

ADA	IDEA	Section 504
Most integrated setting appropriate	Least restrictive environment	Least restrictive environment



Federal Laws: Due Process

ADA	IDEA	Section 504
<p>Schools must have a coordinator and grievance procedures.</p>	<p>Parents can file complaints with the school district or the state.</p>	<p>School districts must have a coordinator and adopt grievance procedures that incorporate due process standards that provide for the prompt and equitable resolution of complaints.</p>



Federal Laws: Enforcement

ADA	IDEA	Section 504
U.S. Department of Education	State Education Agency and U.S. Department of Education	U.S. Department of Education



Class-action Lawsuit

Class-action Lawsuit: *J.N. v. Oregon Department of Education Complaint*

Filed January 2019 by Disability Rights Oregon on behalf of students who had been placed on partial-day schedules

Problems outlined in complaint:

- State of Oregon failed to ensure that students with disabilities had access to the educational opportunities guaranteed to them
 - School districts placed students on abbreviated days
 - Oregon Department of Education did not take steps necessary to ensure students' rights were upheld



Class-action Lawsuit: Neutral Expert Report

June 2022

Findings:

- No consistent use of signed parental permission for abbreviated days
- No mandated trainings provided by ODE
- Districts' record-keeping often poor or neglected
- State has no effective or efficient way to gather data or monitor the use of shortened days
- Some districts withheld information
- Students sometimes placed in permanent abbreviated day programs
- Students often required to “earn” full school days



Class-action Lawsuit: Neutral Expert Report

June 2022

Findings (continued):

- Students often did not have any behavioral goals or a behavioral intervention plan
- In many cases parental consent was not obtained



Division 22/State Oversight Workgroup

Division 22/State Oversight Workgroup

Participants:

- Disability Rights Oregon
- FACT Oregon
- School-based advocacy organizations
- ODE Staff

Met May-September 2022

Topics discussed:

- Oversight of school districts in other states (50-state survey)
- K-12 Systemic Risk Report



Division 22/State Oversight Workgroup

50-state survey

- Reviewed state education laws
- Did not review:
 - Local government statutes
 - Open meetings statutes
 - Public records statutes
 - Administrative rules
- Caveat: states may have oversight/intervention authority listed in other statutes or administrative rules



Division 22/State Oversight Workgroup

50-state survey

- Oversight categories
 - Basic minimum operating standards (at least 39 states)
 - Outcomes-based accountability (at least 21 states)
 - Budget oversight (at least 23 states)



Division 22/State Oversight Workgroup

50-state survey

- Types of interventions
 - Require an improvement or compliance plan (nearly universal)
 - Override local decisions, often by means of appeal (at least 18 states)
 - Penalties (at least 20 states)
 - Misdemeanor violations (fines, jail time)
 - Removal from office
 - Suspension/revocation for licensed individuals



Division 22/State Oversight Workgroup

50-state survey

- Types of interventions
 - State intervention (at least 16 states)
 - Reallocate staff or make budgetary changes
 - Appoint a state monitor or receiver
 - Allow open enrollment for students
 - Reduce state funding to a district (at least 23 states)

