INTRODUCTION

One of the major challenges facing educators today is addressing the educational needs of children with disabilities. Amazingly, though, this was not always a concern for school officials.

In fact, unlike today’s schools, until well into the 19th century, most school systems did virtually nothing to serve students with disabilities. During the latter half of the 19th century, special schools and classes began to emerge for children who were visually and hearing impaired as well as for those with physical disabilities; children who were retarded or had emotional problems or serious physical disabilities were still largely ignored. During the late 19th and early 20th centuries, classes were developed for students who were mentally retarded. Even so, these programs were segregated, offered little for students with physical disabilities, and often were taught by insufficiently trained personnel. Fortunately, during the latter half, or more precisely, the final quarter, of the 20th century, American educational leaders, lawmakers, and others recognized the need to meet the educational concerns of students with disabilities.

In light of the framework of statutes, regulations, cases, and other sources of law protecting the rights of students with disabilities, the first of the three sections in this chapter presents a brief overview of the American legal system by discussing the sources of law. Even though some might
perceive this material as overly legal, this section is designed to help readers who may be unfamiliar with general principles of educational law so that they may better understand both the following chapters and the legal system within which they work. The second section briefly examines the history of the movement to obtain equal educational opportunity rights for students with disabilities, highlighting key cases that shaped legal developments in this area. The final section briefly reviews major federal legislation safeguarding the educational rights of children with disabilities; this part of the chapter also acknowledges that the states have adopted similar laws.

**SOURCES OF LAW**

The United States Constitution is the law of the land. As the primary source of American law, the Constitution provides the framework within which the entire legal system operates. To this end, all actions taken by the federal and state governments, including state constitutions, which are supreme within their states as long as they do not contradict or limit rights protected under their federal counterpart, statutes, regulations, and common law, are subject to the Constitution as interpreted by the Supreme Court.

As important as education is, it is not mentioned in the Constitution. Under the Tenth Amendment, according to which “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,” education is primarily the concern of individual states. The federal government can intervene in disputes, such as with *Brown v. Board of Education* (1954), when state action deprives individuals to rights protected under the Constitution. In *Brown*, the Supreme Court struck down state-sanctioned racial segregation because it violated the students’ rights to equal protection under the Fourteenth Amendment.

Along with delineating the rights and responsibilities of Americans, the Constitution establishes the three coequal branches of government that exist on both the federal and state levels. The legislative, executive, and judicial branches of government, in turn, give rise to the three other sources of law.

The legislative branch makes the law. In other words, once a bill completes the legislative process, it is signed into law by a Chief Executive, who has the authority to enforce the new statute. Federal statutes are located in the United States Code (U.S.C.) or the United States Code Annotated (U.S.C.A.), a version that is particularly useful for attorneys and other individuals working with the law. State laws are identified by a variety of titles.

Keeping in mind that a statute provides broad directives, the executive branch fleshes a law out by providing details in the form of regulations. For example, a typical compulsory attendance law requires that “[e]xcept
as provided in this section, the parent of a child of compulsory school age shall cause such child to attend a school in the school district in which the child is entitled to attend school [Ohio Revised Code, § 3321.03 (2001)].” Insofar as statutes are typically silent on such matters as the content of the curriculum and the length of the school day, these elements are addressed by regulations that are developed by personnel at administrative agencies who are well versed in their areas of expertise. Given their extensiveness, it is safe to say that the professional lives of educators, especially in public schools, are more directly influenced by regulations than by statutes. Federal statutes are located in the Code of Federal Regulations (C.F.R.). State regulations are identified by a variety of titles.

From time to time the United States Department of Education issues policy letters, typically in response to inquiries from state or local educational officials, to either clarify a regulation or interpret what is required by federal law. These letters are generally published in the Federal Register and are often reproduced by loose-leaf law-reporting services.

The fourth and final source of law is judge-made or common law. Common law refers to judicial interpretations of issues that may have been overlooked in the legislative or regulatory process or that may not have been anticipated when a statute was enacted. In the landmark case of Marbury v. Madison (1803), the Supreme Court asserted its authority to review the actions of other branches of government and in so doing establishes precedent. Although there is an occasional tension between the three branches of government; the legislative and executive branches generally defer to judicial interpretations of their actions.

Common law is rooted in the concept of precedent, the proposition that a majority ruling of the highest court in a given jurisdiction, or geographic area over which a court has authority, is binding on all lower courts within its jurisdiction. In other words, a ruling of the United States Supreme Court is binding throughout the nation, while a decision of a state supreme court is binding only in that state. Persuasive precedent, a ruling from another jurisdiction, is actually not precedent at all. That is, as a judge in Indiana seeks to resolve a novel legal issue, the judge would typically review precedent from other jurisdictions to determine whether it has been addressed elsewhere. A court is not bound to follow precedent from another jurisdiction.

The federal courts and most state judicial systems have three levels: a trial court, an intermediate appellate court, and a court of last resort. In federal court, trial courts are known as federal district courts. Each state has at least one federal district court and some densely populated states, such as California and New York, have as many as four. State trial courts employ a variety of names.

Trial courts typically involve one judge and a jury. The role of the judge, as trier of law, is to apply the law by deciding, for example, whether evidence
is admissible and instructs the jury on how the law should be applied in a case. Federal judges are appointed for life based on the advice and consent of the United States Senate; state courts vary as some judges are appointed, while others are elected. A jury is the trier of fact to the extent that it decides what happened and enters a verdict based on the evidence presented at trial. As the trier of fact in a special education suit, a jury (or, in a nonjury trial, the judge) reviews the record of administrative, or due process, hearings and additional evidence and hears the testimony of witnesses.

Other than in areas such as special education, which is controlled by the Individuals with Disabilities Education Act (IDEA), few education cases fall under the jurisdiction, or the legal authority to hear a dispute, of the federal courts. Before a dispute can proceed to federal court, it must satisfy one of two broad categories.

First, a case must involve diversity of citizenship, namely that the plaintiff and defendant are from two different jurisdictions, and the amount in controversy must be at least $100,000; this latter requirement is imposed because of the costs associated with operating the federal court system. Second, a dispute must involve a federal question, meaning that it is over the interpretation of the United States Constitution, a federal statute, or a federal regulation.

A party not satisfied with the decision of a trial court ordinarily has the right to appeal to seek discretionary review from an intermediate appellate court. As reflected in Figure 1.1, there are 13 federal judicial circuits in the United States. Under this arrangement, which is designed, in part, for administrative ease and convenience, each circuit is comprised of several states. For example, the Sixth Circuit consists of Michigan, Ohio, Kentucky, and Tennessee. State courts with a three-tiered system most often refer to this intermediate appellate level as a court of appeals. An intermediate appellate court typically consists of three judges and ordinarily reviews a case for errors in the record of a trial court rather than the facts.

A party not satisfied with the ruling of an intermediate appellate court may seek review from the high court in the jurisdiction. In order for a case to reach the Supreme Court, a party must file a petition seeking a writ of **certiorari** (literally, to be informed). In order to be granted a writ of **certiorari**, at least four of the Court’s nine Justices must agree to hear an appeal. Insofar as the Court receives approximately 5000 petitions per year and takes, on average, perhaps 100 cases, it should be clear that few cases will make their way to the Supreme Court. The denial of a writ of **certiorari** is of no precedential value and merely has the effect of leaving the lower court’s decision unchanged. It is generally easier for a discretionary appeal in a state court to reach the court of last resort, typically composed of five, seven, or nine members, especially where a state law is at issue.

Supreme Court cases can be located in a variety of formats. The official version is in the United States Reports, abbreviated U.S. The same text,
with additional research aids, is in the Supreme Court Reporter (S. Ct.) and the Lawyer’s Edition, now in its second series (L. Ed.2d). Federal appellate cases are found in the Federal Reporter, now in its third series (F.3d) while federal trial court rulings are in the Federal Supplement, now in its second series (F. Supp.2d). State cases are published in a variety of publications, most notably West’s National Reporter system, which breaks the country up into seven regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, South Western, and Southern. Prior to being published in bound volumes, most cases are available in so-called slip opinions, a variety of loose-leaf services, and electronic sources. Statutes and regulations are also available in similar readily accessible formats.

Legal citations are easy to read. The first number indicates the volume number where the case, statute, or regulation is located; the abbreviation refers to the book or series in which the material may be found; the second number indicates the page on which a case begins or the section number of a statute or regulation; the last part of a citation includes the name of the court, for lower court cases, and the year in which the dispute was resolved. For example, the citation for Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the first Supreme Court case involving special education, reveals that it can be found on page 176 of volume 458 of the United States Reports. The earlier case between the parties, Rowley v. Board of Education of the Hendrick Hudson Central School District, 632 F.2d 945 (2d Cir.1980), which was decided by the Second Circuit in 1980, begins on page 945 of volume 632 in the Federal
Prior to 1975, the federal government did not require states to provide special education services to students with disabilities. Previously, some states had enacted legislation offering special education services to students with disabilities, but they were in the minority. Before the enactment of these laws, school boards routinely excluded students with disabilities. When challenged, the courts largely upheld exclusionary practices until the early 1970s. The federal initiative came after a long battle by advocates of the disabled to gain equal rights and was spurred on as a direct result of the civil rights movement.

The impetus for ensuring equal educational opportunities for all American children can be traced to *Brown* (1954). Although resolved in the context of school desegregation, in *Brown* a unanimous Supreme Court set the tone for later developments, including those leading to protecting the rights of students with disabilities, in its assertion that “[e]ducation is perhaps the most important function of state and local governments” (p. 493). The Court added that “[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right that must be made available to all on equal terms” (p. 493). These statements have often been quoted either directly or paraphrased by other courts in cases where parties sought equal educational opportunities for students with disabilities.

Following *Brown*, the rights of the disabled continued to be overlooked. Throughout the 1950s, more than half of the states had laws calling for the sterilization of individuals with disabilities while others limited such basic rights as voting, marrying, and obtaining a driver’s license. By the 1960s, the percentages of children who were served in public schools began to rise; the 12% of children in public schools in 1948 who were disabled increased to 21% in 1963.
and 38% in 1968 (Zettel & Ballard, 1982). As of July 1, 1974, the federal Bureau for the Education of the Handicapped reported that about 78.5% of America’s 8,150,000 children with disabilities received some form of public education. Of these children, 47.8% received special education and related services, 30.7% received no related services, and the remaining 21.5% received no educational services at all (House Report, 1975).

A major push for the development of special education came in judicial actions that set the stage for statutory developments. Rather than trace the full history of this litigation, this brief review focuses on arguably the two most significant cases in this regard. These suits, although decided in trial courts, are considered landmark cases insofar as they provided the impetus for Congress to pass sweeping legislation that safeguarded the rights of students with disabilities, regardless of the severity or nature of the disability.

Pennsylvania Association for Retarded Children v. Pennsylvania (PARC) (1971, 1972) established the bases for what developed into the IDEA. In PARC, advocates filed suit in a federal trial court against the state on behalf of all mentally retarded individuals between the ages of 6 and 21 who were excluded from the public schools. The state sought to justify the exclusions on the basis of four state statutes that relieved local school districts of any obligation to educate a child that a school psychologist certified as uneducable and untrainable, allowed postponement of admission to any child who had not attained a mental age of 5 years, excused a child from compulsory attendance who had been found unable to profit from education, and defined compulsory school age as 8 to 17 (but was used to exclude mentally retarded children who were not between those ages). The plaintiffs challenged the constitutionality of the statutes and sought to enjoin their enforcement.

PARC was resolved via a consent decree, meaning that the parties essentially reached a settlement on their own that the court approved. According to the decree, no mentally retarded child, or child thought to be mentally retarded, could be assigned to or excluded from a special education program without due process. This meant that children with disabilities could neither be denied admission to a public school nor be subjected to a change in educational placement unless their parents received procedural due process and that a placement in a regular school classroom was preferable to one in a more restrictive setting. The court added not only that all children can learn in school settings but also that Pennsylvania was obligated to provide each mentally retarded child with a free appropriate public education and training program appropriate to a child’s capacity.

Similarly, in Mills v. Board of Education of the District of Columbia (Mills) (1972), proponents filed a class action suit in a federal trial court on behalf
of the approximately 18,000 students with disabilities who were not receiving special education services. Most of the children, who were also minorities, were classified as having behavior problems or being mentally retarded, emotionally disturbed, and/or hyperactive. The plaintiffs sought a declaration of their rights and an order directing the school board to provide a publicly supported education to all students with disabilities. The court rejected the school board’s claims that since it lacked the resources for all of its students, it could deny services to children with disabilities.

Unlike PARC, which was a consent decree, Mills was a decision on the record, meaning that the court reached its judgment after a trial on the merits of the dispute. The court found that the United States Constitution, the District of Columbia Code, and its own regulations required school officials to provide a publicly supported education to all children, including those with disabilities. The court ruled that the school board had to expend its funds equitably so that all students would receive an education consistent with their needs and abilities. If sufficient funds were not available, the court directed that existing funds would have to have been distributed in such a manner that no child was entirely excluded and the inadequacies could not be allowed to bear more heavily on one class of students. The court also ordered the board to provide due process safeguards before any child was excluded from the public schools, reassigned, or had special education services terminated while outlining elaborate due process procedures that later formed the foundation for the due process safeguards that were included in the IDEA. Insofar as Mills originated in Washington, DC, it was probably among the more significant influences moving federal lawmakers to act to ensure adequate protection for children with disabilities when they adopted Section 504 of the Rehabilitation Act of 1973 (2002) and the IDEA (2002).

In light of legal developments following PARC and Mills, the remainder of this book reviews major developments designed to safeguard the educational rights of children with disabilities. In the wake of the literally thousands of suits that have been filed in federal and state courts, selected cases are discussed under appropriate headings throughout this book rather than as separate entries.

**LEGISLATIVE MANDATES**

Special education in the United States is governed by three major federal laws, the IDEA (1997), Section 504 of the Rehabilitation Act (Section 504) (1998), and the Americans with Disabilities Act (ADA) (1990), and numerous state laws. After highlighting key features of the IDEA, this chapter
provides an overview of Section 504 and a brief look at the ADA. The remainder of the book focuses on the IDEA, paying particular attention to its application by school administrators.

**Individuals with Disabilities Education Act**

Insofar as the remainder of this book focuses on the IDEA, this section serves as a very brief overview of this comprehensive law. In 1975 Congress passed Public Law (P.L.) 94–142, the 142nd piece of legislation introduced during the 94th Congress; at that time it was known as the Education for All Handicapped Children Act. In 1990 this landmark statute was amended and renamed the Individuals with Disabilities Education Act; the IDEA underwent additional major changes in 1997. For the sake of clarity, this book refers to the IDEA by its new title throughout.

Unlike Section 504, which has fairly broad standards, in order to qualify for services under the IDEA, a child with a disability must meet three statutory requirements. First, a child must be between the ages of 3 and 21 (20 U.S.C. § 1412(a)(1)(B)(i)(ii)). Second, a child must have a specifically identified disability (20 U.S.C. § 1401(3)). Third, a child must be in need of special education (20 U.S.C. § 1401(3)(A)(ii)), meaning that he or she must be in need of a free appropriate education (FAPE) (20 U.S.C. § 1401(8)) in the least restrictive environment (LRE) (20 U.S.C. § 1412(5)(A)) that conforms to an individualized education program (IEP) (20 U.S.C. §§ 1401(11), 1414(d)). In addition, each child with a disability is entitled to related services (20 U.S.C. § 1401(3)(A)(ii), 20 U.S.C. § 1401(a)(22)), such as transportation, psychological services, physical therapy, and occupational therapy, to assist him or her in benefiting from an IEP.

The IDEA includes an elaborate system of procedural safeguards to protect the rights of children and their parents (20 U.S.C. § 1415). The IDEA requires school officials to provide written notice and obtain parental consent prior to evaluating a child (20 U.S.C. § 1414(a)(1)(C)), making an initial placement (20 U.S.C. § 1415(b)(3)), or initiating a change in placement (20 U.S.C. § 1415(b)(3)(A)). Further, the parents of a child with a disability must be afforded the opportunity to participate in the development of the IEP for and placement of their child (20 U.S.C. §§ 1414(d)(1)(B)(i), 1414(f)). Once placed, a child’s situation must be reviewed at least annually (20 U.S.C. § 1414(d)(4)(A)) and reevaluated completely at least every 3 years (20 U.S.C. § 1414(a)(2)(A)). In addition, the IDEA includes provisions, supplemented by the Family Educational Rights and Privacy Act (29 U.S.C. § 1232g) and its accompanying regulations (34 C.F.R. §§ 300.560–577), preserving the confidentiality of all information used in the evaluation, placement, and education of students.
Section 504 of the Rehabilitation Act of 1973

The Rehabilitation Act of 1973 was the first federal civil rights law protecting the rights of the disabled. Section 504 declares that “[n]o other-wise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance . . .” (29 U.S.C. § 794(a), 1998).

Section 504, which is not predicated on an institution’s receipt of federal financial assistance, is applicable to virtually all schools because this term is interpreted so expansively (Bob Jones University v. United States, 1983) and offers broad-based protection to individuals under the more amorphous concept of impairment rather than disability. It is important to note that while Section 504 covers children, employees, and others, this book focuses on the rights of students. Section 504 defines an individual with a disability as one “who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment (29 U.S.C. § 706(7)(B)).” The regulations define physical or mental impairments as including the following:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or

Table 1.1 Major Differences Between the IDEA and Section 504

<table>
<thead>
<tr>
<th>Points of Consideration</th>
<th>IDEA</th>
<th>Section 504</th>
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</thead>
<tbody>
<tr>
<td>Age limits</td>
<td>3–21</td>
<td>None—all are covered</td>
</tr>
<tr>
<td>Disabilities/impairments</td>
<td>Only specified disabilities</td>
<td>Have, had, believed to have had impairment that affects a major life activity</td>
</tr>
<tr>
<td>Limits/defenses</td>
<td>None: zero reject</td>
<td>Cost; major change in program; health/safety</td>
</tr>
<tr>
<td>Funding</td>
<td>School boards receive additional federal aid</td>
<td>No extra funding for compliance</td>
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<tr>
<td>Dispute resolution</td>
<td>Must exhaust administrative remedies</td>
<td>Exhaustion not necessary; may file suit directly</td>
</tr>
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</table>
(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disorders. (45 C.F.R. § 84.3(j)(2)(i), 34 C.F.R. § 104.3(j)(2)(i))

A note accompanying this list indicates that it merely provides examples of the types of impairments that are covered; it is not meant to be exhaustive.

In order to have a record of impairment, an individual must have a history of, or been identified as having, a mental or physical impairment that substantially limits one or more major life activities. According to the regulations, an individual who is regarded as having an impairment has

(A) a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) none of the impairments . . . but is treated by a recipient as having such an impairment. (45 C.F.R. § 84.3(j)(2)(iv), 34 C.F.R. § 104.3(j)(2)(iv))

“‘Major life activities’ means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (45 C.F.R. § 84.3(j)(2)(i)). Once a student is identified as having a disability, the next step is to determine whether he or she is “otherwise qualified.” In order to be “otherwise qualified,” as the term is applied to students, a child must be “(i) of an age during which non-handicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) [a student] to whom a state is required to provide a free appropriate public education [under the IDEA] (45 C.F.R. § 84.3(k)(2).” An individual who is “otherwise qualified,” meaning that he or she is eligible to participate in a program or activity despite the existence of an impairment, must be permitted to participate in the program or activity as long as it is possible to do so by means of a “reasonable accommodation (34 C.F.R. § 104.39).”

Once identified, each qualified student with a disability is entitled to an appropriate public education, regardless of the nature or severity of his or her disability. In order to guarantee that an appropriate education is made available, Section 504’s regulations include due process requirements for evaluation and placement similar to those under the IDEA (34 C.F.R. § 104.36).

In making modifications for students, educators must provide aid, benefits, and/or services that are comparable to those available to students
who are not disabled. Accordingly, children with disabilities must receive comparable materials, teacher quality, length of school term, and daily hours of instruction. These programs should not be separate from those available to students who are not disabled unless such segregation is necessary for the program to be effective. While schools are not prohibited from offering separate programs for students with disabilities, these children cannot be required to attend such classes unless they cannot be served adequately in a less restrictive setting (34 C.F.R. § 104.4(b)(3)). If such programs are offered separately, facilities must, of course, be comparable (34 C.F.R. § 104.34(c)).

A reasonable accommodation may involve minor adjustments such as permitting a child to be accompanied by a service dog (Sullivan v. Vallejo City Unified School District, 1990), modifying a behavior policy to accommodate a student with an autoimmune disease who was disruptive (Thomas v. Davidson Academy, 1994), or providing a hearing interpreter for a student (Barnes v. Converse College, 1977). Academic modifications might include permitting a child a longer period of time to complete an examination or assignment, using peer tutors, distributing outlines in advance, employing specialized curricular materials, and/or permitting students to use laptop computers to record answers on examinations. In modifying facilities, school officials do not have to make every classroom and/or area of a building accessible; it may be enough to bring services to a child such as offering a keyboard for musical instruction rather than revamping an entire music room for a student who wishes to take piano classes.

Even if a child appears to be “otherwise qualified,” school officials can rely on one of three defenses to avoid being charged with noncompliance of Section 504. This represents a major difference between Section 504 and the IDEA since no such defenses are applicable under the latter. Another major difference between the laws is that the federal government provides public schools with direct federal financial assistance to help fund programs under the IDEA but offers no financial incentives to aid institutions, public and nonpublic, as they seek to comply with the dictates of Section 504.

The first defense under Section 504 is that officials can be excused from making accommodations that result either in “a fundamental alteration in the nature of [a] program” (Southeastern Community College v. Davis, 1979, p. 410). The second defense permits school officials to avoid compliance if a modification imposes an “undue financial burden[s]” (Davis, p. 412) for the institution or entity as a whole and not simply as applied to one individual. The third defense is that an otherwise qualified student with a disability can be excluded from a program if his or her presence creates a substantial risk of injury to himself, herself, or others (School Board of Nassau County v. Arline, 1987). As such, a child with a severe visual impairment
could be excluded from using a scalpel in a biology laboratory. However, in order to comply with Section 504, school officials would probably have to offer a reasonable accommodation such as providing a computer-assisted program to achieve an instructional goal similar to the one that would have been achieved in a laboratory class.

Finally, Section 504, which is enforced by the Office of Civil Rights, requires each recipient of federal financial aid to file an assurance of compliance; provide notice to students and their parents that their programs are nondiscriminatory; engage in remedial actions where violations are proven; take voluntary steps to overcome the effects of conditions that resulted in limiting the participation of students with disabilities in their programs; conduct a self-evaluation; designate a staff member, typically at the central office level, as compliance coordinator; and adopt grievance procedures (34 C.F.R. § 104.5).

**Admissions Examinations/Standards**

Insofar as some public schools may require applicants to take admission examinations and/or be interviewed prior to acceptance or placement in order to determine whether they are otherwise qualified, these provisions need to be addressed. The regulations address four areas: preplacement evaluation, evaluation, placement, and reevaluation (34 C.F.R. § 104.35).

As to preplacement evaluation, the regulations require school officials to evaluate all children who, because of their conditions, need or are believed to need, special education or related services before taking any action with respect to their initial placements in regular or special education as well as with regard to subsequent significant changes in placement.

The evaluation provisions of the regulation require school systems to follow procedures similar to those under the IDEA. More specifically, tests and other evaluation materials must be validated for the specific purposes for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer. These materials must also be tailored to assess specific areas of educational need and cannot be designed to provide a single general intelligence quotient. Further, these materials must be selected and administered in a way that best ensures that when tests are administered to students with impaired sensory, manual, or speaking skills, the results accurately reflect a child’s aptitude or achievement level, or whatever other factor the test purports to measure, rather than reflecting the student’s impaired sensory, manual, or speaking skills except where those skills are the factors that the test purports to measure. As educators apply placement procedures to students under Section 504, their interpretations of data must consider information from a variety of sources,
including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behaviors that have been documented and carefully considered. Further, any such decision must be made by a group of persons, including individuals who are knowledgeable. In addition, each child must be periodically reevaluated in a manner consistent with the dictates of the IDEA.

Under Section 504, schools relying on examinations or interviews may be required to provide reasonable accommodations to applicants who are disabled. While school officials are not required to alter the content of an examination or an interview, they may be required to make accommodations in how a test is administered or an interview is conducted. In other words, school officials would not be required to make an examination easier so that students who simply lacked the requisite knowledge could pass, but may have to alter the conditions under which an examination is administered, or an interview is conducted, so that a student with a disability with the requisite knowledge and skills to pass or express himself or herself fully can do so despite his or her disability.

Accommodations for an examination may be as simple as providing a quiet room without distractions, essentially a private room away from others, for a student who suffers from attention deficit hyperactivity disorder or procuring the services of a reader or a braille version of an examination for an applicant who is blind. Further, a student with a physical disability may require special seating arrangements, a scribe to record answers to questions, and/or being permitted to use a computer to record answers on examinations. Similarly, whether as part of an examination or admissions interview, a student who is hearing impaired might be entitled to the services of a sign language interpreter to communicate directions that are normally given orally. At the same time, school officials may be required to provide a student with a learning disability with extra time in which to complete an examination or make a computer available to a child who may be more comfortable with one than with a traditional paper-and-pencil test.

Prior to receiving an accommodation, a student must prove that he or she has a learning disability (Argen v. New York State Board of Law Examiners, 1994) and that the extra time to take an examination is necessary due to the disability. The purpose of providing the extra time is to allow a student who might have difficulty processing information sufficient opportunity to show that he or she was capable of answering the questions. It is the responsibility of a student (and his or her parents) to make school officials aware of the fact that he or she is disabled and needs testing, or interviewing, accommodations. To this end, administrators should require proof that a student has a disability in need of accommodation in order for a child to demonstrate knowledge and skills on the examination. A student,
through his or her parent(s), should also suggest which accommodations would be most appropriate. In considering whether a student is entitled to accommodations, school officials must make individualized inquiries. School officials would violate Section 504 if they refused to make testing accommodations or made modifications only for students with certain specified disabilities.

**Section 504 Service Plans**

As noted, students who qualify under the Section 504 definition are entitled to reasonable accommodations so that they may access a school’s programs. Making accommodations may involve alterations to the physical plant, such as building wheelchair ramps or removing architectural barriers, so that students may physically enter and get around the school building. Schools must also allow students to bring service dogs into the classroom (*Sullivan v. Vallejo City Unified School District*, 1990). School officials are not required to provide accommodations that go beyond what would be considered to be reasonable. As noted, accommodations that are excessively expensive, expose the school’s staff to excessive risk, or that require a school to substantially modify the mission or purpose of a program are not required.

Although not specifically required by Section 504, many schools spell out the accommodations and services that will be provided to an eligible student in a written service plan. Even though a written service plan is not required by federal law, the components of a service plan are likewise not mandated. In practical terms, the following components should be included in a written Section 504 service plan:

- **Demographic Data**—student’s name, date of birth, school identification number, grade, school, teacher, parents’ names, address, telephone numbers, and the like
- **Team Members**—a listing of all team members, and their respective roles, who contributed to the development of the service plan
- **Disability**—a description of the student’s disability, and its severity, along with an explanation of how it impedes the child’s educational progress
- **Accommodations and Services**—a detailed description of the accommodations and services to be made offered under the plan, including the frequency and location of services and where they will be provided

In addition, evaluative reports or assessments that helped to determine the nature of a student’s disability and the need for accommodations and services should be attached.
Americans with Disabilities Act

The Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.), enacted in 1990, prohibits discrimination against individuals with disabilities in the private sector. According to the ADA’s preamble, its purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” (42 U.S.C. § 12101). Basically, the intent of the ADA is to extend the protections afforded by Section 504 to programs and activities that are not covered by Section 504 because they do not receive federal funds.

Although the ADA is aimed primarily at the private sector, public agencies are not immune to its provisions. Compliance with Section 504 does not automatically translate to compliance with the ADA. The legislative history of the ADA indicates that it also addresses what the judiciary had perceived as shortcomings or loopholes in Section 504.

State Statutes

Since education is a state function, special education is governed by state statutes as well as the federal laws discussed above. Each state’s special education laws must be consistent with the federal laws; however, differences do exist. Most states have laws that are similar in scope, and even language, to the IDEA. However, several states have provisions in their legislation that go beyond the IDEA’s substantive and procedural requirements in that they have set higher standards of what constitutes an appropriate education for a student with disabilities. Further, most states have established procedures for program implementation that are either not covered by federal law or have been left to their own determination. If a conflict develops between provisions of the federal law and a state law, federal law is supreme.

A comprehensive discussion of the laws of each of the 50 states, the District of Columbia, and U.S. possessions and territories is beyond the scope of this book. Indeed, an entire book could be written on the special education laws of each state. The purpose of this book is to provide information on the federal mandate, the law that encompasses the entire nation. Thus, educators are cautioned that they cannot have a complete understanding of special education law if they are not familiar with state law and so should seek out a source of information on pertinent state law as a supplement to this book.

RECOMMENDATIONS

Even though they will rely largely on their attorneys when dealing with technical aspects of a dispute involving special education, educators
Figure 1.2  Frequently Asked Questions

Q: Why was the IDEA passed in the first place?
A: When the IDEA was first passed in 1975 many states did not have special education laws. Congress found that many students with disabilities were excluded from the public schools and that those who were attending the public schools were not always being given an appropriate education. Prior to the passage of the IDEA, advocates for students with disabilities had won some significant lawsuits against states and school districts. The IDEA was passed, in part, in response to those lawsuits but mostly to provide students with disabilities with an equal educational opportunity.

Q: What is the difference between federal and state laws governing special education?
A: State law must be consistent with the federal law but can, and often does, provide the student with disabilities with additional rights and protections. If there is a conflict between the two laws, the federal law governs under the supremacy clause of the constitution. Thus, it is important for school officials to be familiar with both the federal law and their state law.

Q: Why are some students with disabilities covered only by Section 504 and not the IDEA?
A: The IDEA requires that to be eligible the student with disabilities must need special education and related services as a result of the disability. Thus, if a child has a disability that requires no special education the student would not be entitled to the rights and protections of the IDEA. That student may, however, qualify for protections against discrimination under Section 504.

Q: What is the purpose of the IDEA's implementing regulations?
A: The IDEA provides general guidelines of what a state and local school district is required to do. The regulations, written by the Department of Education, are more specific. The regulations reflect the statute and in many cases are identical to the statute in actual wording. However, the regulations provide more detailed step-by-step guidance on how the law is to be implemented.

Q: Why is it important to be familiar with court decisions?
A: Although the IDEA and its regulations are quite comprehensive, their authors could not possibly anticipate every possible situation that could arise. Thus, many of the Act's provisions are open to interpretation when applied to a specific set of circumstances. Courts provide us with an interpretation of how the law is to be applied in many unique situations. By studying court decisions, school officials have a better understanding of how the law has been interpreted and are thus better prepared to implement the law's mandates to a specific situation.
should acquaint themselves with both the federal and state legal systems. By familiarizing themselves with the legal system(s) educators can assist their attorneys and school systems because such a working knowledge can help to cut right to the heart of issues and help to avoid unnecessary delays.

School officials should recognize the significant differences between Section 504, the IDEA, and other disability-related laws so as to better serve the needs of children with disabilities.

When dealing with matters relating to special education, educators should rely on an attorney who specializes in education law, with a particular focus on special education. If school officials are unable to find such an attorney on their own, they should contact their state school boards association, bar association, or professional groups such as the Education Law Association.

REFERENCES

Code of Federal Regulations, as cited.
Ohio Revised Code, § 3321.03 (2001).