

STUDENT DISABILITY RIGHTS



Are there laws that protect me if I have a disability?

Yes. The two main laws are the Individuals with Disabilities Education Act (“IDEA”) and Section 504 of the Rehabilitation Act, which people usually just call “Section 504.” The Americans with Disabilities Act (“ADA”) also protects students with disabilities.

The IDEA says that public schools have to give all students with disabilities an “appropriate education” (called a “free appropriate public education” or FAPE) in the “least restrictive environment.” This basically means that a school has to teach you in a way that is designed just for your disability. The “least restrictive environment” means that the school can’t put you in a different place than students without disabilities without a very good reason. All public schools have to follow this law.

Section 504 says that schools can’t discriminate against you because of your disability, just like they can’t discriminate against you because of your race or gender. This means that public schools have to give you an “appropriate education,” just like under the IDEA. Schools also have to give you the same chances as students without disabilities. This means the school can’t keep you off of field trips and extracurricular activities because of your disability! All schools that get money from the federal government have to follow this law. This includes all public schools and some private schools (but private schools do not have to provide an “appropriate education”).

The ADA also says that schools can’t discriminate against you because of your disability, and tells schools that they have to make “reasonable modifications” to their policies to accommodate your disability. This is another way of saying that schools may have to change the way they do things to let you join in a field trip, club, or extracurricular activity. All schools except for religious private schools have to follow this law. The ADA is helpful when you are asking for changes that aren’t closely connected to your education, like bringing a service dog to school or carrying your own medication.

What kind of disability do I need to be protected?

Under the IDEA, there are 13 types of disabilities. Some of these types are very specific, like autism or deafness. But some types are general, like “other health impairment” (“OHI”). Things like ADHD (attention deficit-hyperactivity disorder) or a heart condition can be an OHI if they make it hard to pay attention in the classroom. Other disabilities include learning disability, emotional disturbance, speech impairment, intellectual disability, and traumatic brain injury. You also have to show that your disability “adversely affects” how you do in school. This means that your disability makes it hard for you to learn and you need special education. You can usually show this with low grades, but low grades are not required.

To be protected under Section 504 and the ADA, you don’t have to have specific disabilities like under the IDEA. Anything could be a disability (both mental and physical) if it makes it hard for you to do a “major life activity.” Lots of things that you do every day count as major life activities, like walking, breathing, eating, thinking, communicating, learning, or going to school. The functions of internal organs and systems like the heart and lungs are also major life activities, so anything that affects them could be a disability. Some examples of these disabilities are depression, anxiety, asthma, or a heart condition.

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If I have a disability, does my school need to take any action?

YES. If you have a disability under the IDEA, your school will meet with your family/caregivers to develop your Individualized Education Program (IEP).

If you have a disability under Section 504 or the ADA and need any educational services or accommodations, your school should meet with your family/caregivers to develop a plan for providing those services (often called a 504 Plan).

What are IEPs and 504 Plans?

IEPs and 504 plans are documents that let you and everyone you work with at the school know how the school is going to meet your needs. If you have a disability under the IDEA you will have an IEP, and if you don't have a disability under IDEA but have one under Section 504 you should have a 504 Plan. These two documents have different names but do many of the same things. You should remember that once you and your school agree on an IEP or 504 Plan, the school has to follow it.

An IEP is an individualized special education plan. It tells teachers how to teach you and what changes you need in the classroom. Some different ways of teaching can be in small groups, one-on-one, the teacher giving you written instructions for an assignment, or letting you use hands-on materials such as flash cards with pictures for a lesson.

Your IEP can also have what are called "related services." These give you extra help to learn in school. These types of services can include speech therapy, counseling, tutoring, occupational therapy, behavior therapy, and many others.

These plans will also tell your teachers the changes to rules or the way things are done at school to help you participate. These changes are made just for your disability. For example, if you have anxiety the school could change the rules so that you get extra time on tests or take a test in a room by yourself. If you have a physical disability, a 504 plan could give you more time between classes or let you use the school's elevator that other students aren't allowed to use.

The IEP also lists goals for you every year. These are things that you, your family/caregivers, and teachers want to see you do for the next year. These can be academic goals (like learning to read at a certain grade level) or behavioral goals (like learning to walk away from a conflict). Whatever the goals are, they shouldn't be too hard or too easy- they should be just challenging enough that you work to meet them all year, just like all students work hard to learn the material in their grade.¹

What does an IEP meeting look like?

An IEP meeting should bring together your teachers, a leader at the school (usually the vice principal or the district's director of special education), your parents or guardian, possibly a counselor or a school psychologist you have worked with, other staff who give you related services (e.g., a speech therapist), and YOU. Yes, you can be part of your IEP meeting too! All of these people make up the "IEP Team."

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Your IEP meeting should start off by talking about your strengths, your goals from the last year, and how you are doing in school right now. Sometimes, a counselor or professional will give you an evaluation, such as a mental health or academic evaluation. These evaluations are like tests and help the IEP team know more about your disability, how you are doing in school, and whether you need more help. If you have been evaluated, your IEP team will talk about those results too. The IEP team will then talk about new goals for the next year. This is where you can talk about things you want to work on for the next year. (The school has to go through your IEP once a year, but it does this at a different time of the year for everyone.)

The last part of an IEP is called “placement,” and it’s where the IEP team decides what is the best kind of classroom for you. You can be in a general education class (meaning with other students without disabilities) with some extra supports. You can also be in a special education class for the whole day or just part of the day, or it could be at a different school. The school can separate you from students without disabilities only if it is *if absolutely necessary*.ⁱⁱ

Once you are 16 years old, your IEP also has to have a “transition plan, and the IEP team should talk about this during the IEP meeting.”ⁱⁱⁱ A transition plan talks about what you want to do after high school and how the school can help you meet that goal. For example, if you want to get a job right after high school, go to a job training program, or go to college, then your transition plan should talk about the ways your school will help you. You can also invite the California Department of Rehabilitation (“DOR”) to your IEP meeting to help with your transition plan. If you invite them, they have to come. The DOR can help you find jobs, pay for college, or just help you figure out what you want to do after high school. To get started with DOR, fill out this [form](#)^{iv} or visit their [website](#).^v

You can record an IEP meeting if you let the school know 24 hours ahead of time.

There aren’t as many rules about who has to be in a 504 plan meeting or what has to be part of your plan. But a 504 meeting still brings together a group of people who know you best to figure out how the school can best support you and help you succeed. During the 504 meeting, the team will have to decide who is responsible for making sure you get every accommodation listed in the plan.

What should I do if I think I have a disability, but don’t know for sure?

If you do not have an IEP right now but think you need special education services from your school because of a disability, your parent, guardian, or teacher can ask that you be given an evaluation or assessment. Another “service provider,” like a counselor, can also request an assessment.

A request for an assessment should be made in writing and include information about your disability, or why this person thinks you may have a disability. [Click here for a sample letter you can use from Disability Rights Education & Defense Fund](#).^{vi}

The school then has 15 days after it gets the request to give your family an “assessment plan.” An assessment plan lists the different tests or evaluations they are going to give you. For example, based on your low grades or anxiety, a school could give you an academic assessment and mental health assessment. Once your parent or guardian signs the assessment plan, the school district has 60 days

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to finish its assessments. Before those 60 days are over, the school has to hold an IEP meeting to talk about the results of the assessment and whether they think you have a disability.

This process might not be exactly the same when requesting a 504 plan, but you still should have your parent/guardian or someone who works with you at school request an assessment if you think you have a disability under Section 504 but not under the IDEA.

If the school district thinks you may have a disability, the IDEA and Section 504 require the district to start the assessment process (this is called “child find”).

If I disagree with the district’s assessments or diagnosis, can I challenge them?

YES. If you disagree with an assessment or diagnosis that the district completed under the IDEA, you can request an independent educational evaluation (“IEE”). An IEE means that a professional who does not work for the district comes in to give a second opinion. The school district must pay for an IEE.

If you want an IEE, you must request it in writing after the school district has already completed their evaluations. [Click here for a sample letter you can use to request an IEE from Disability Rights Education & Defense Fund.](#)^{vii}

If you request an IEE, the school district must either agree to pay for it or file for “due process,” which is a legal hearing in front of a judge where the district must show why the evaluation they gave you is enough.

What if the school isn’t following my IEP or 504 Plan?

If your school isn’t following your IEP or 504 plan, you should contact people in your school or district who might be able to help resolve your problems (like your principal or the district’s 504 coordinator or special education coordinator). If that doesn’t work and your school still isn’t following your IEP, you can send a complaint to the California Department of Education (“CDE”). The CDE will then investigate, and they could require your school to follow your IEP. You have to send your complaint within one year of when your school stopped following your plan. [Click here](#)^{viii} for more information about the process or get started with your [complaint form](#).^{ix} The Disability Rights Education & Defense Fund has [tips for writing a compliance complaint here](#).^x

If the school isn’t following your 504 plan, you can send a complaint with the Office for Civil Rights (OCR) in the U. S. Department of Education. [Click here](#)^{xi} for more information about the process or get started with your [OCR complaint form](#).^{xii}

What is “due process”?

When schools and parents have disagreements, “due process” is one way that schools and parents/guardians can fix them. Due process is like going to a court where a judge decides if the school did something wrong.

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Before going to due process, you will have to try to fix your problem with your school district through “mediation.” This just means that you, your family, and people from your school district will talk to each other and try to fix the problem before going to court.

If mediation does not work, the school district or your family can go to due process. At the court, the judge can hear information from teachers, principals, and families. The judge will also read all of your IEPs and evaluations to help them make a decision. Once the judge makes a decision, it is usually final.

Families and the school district usually have a lawyer to help them at due process. Below is a list of California legal nonprofits who may be able to assist you with this process or refer you to others who may be able to assist you with this process:

- [Alliance for Children’s Rights](#)^{xiii} (for foster youth)
- [Disability Rights California](#)^{xiv}
- [Disability Rights Education & Defense Fund](#)^{xv}
- [Learning Rights Law Center](#)^{xvi}
- [Mental Health Advocacy Services](#)^{xvii}
- [Public Counsel](#)^{xviii}

If English is not my first language, can I still go through the special education process?

YES. If English is not your first language, your school has to make sure you and your family can understand the special education process:

- The school has to provide an interpreter for all IEP meetings. An interpreter is someone who translates what everyone is saying into a different language.
- All papers that the school sends home to your parents have to be in the language your parents feel most comfortable using.
- Any assessments or evaluations must be given to you in the language you feel most comfortable using or the language that will best show how you are doing.
- All assessment must not discriminate against you based on your race or culture.
- The school cannot take longer to give you assessments because of your language.
- The school cannot give you an assessment just because you speak a different language.

Can I get punished at school even though I have a disability?

YES, the school can punish you, like suspending or expelling you, for the same reasons that students without disabilities can be punished. The school cannot punish students with disabilities more than students without disabilities for doing the same things. But students with disabilities have extra protections to make sure they are not punished because of their disability. Here are a few examples:

- Before a school can expel you, they have to hold a “manifestation determination.” This is a meeting where the school decides if your disability caused you to break the rules. If

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your disability did cause you to break the rules, then you can't be expelled, except if keeping you in school would be unsafe. In this meeting the school also has to look at if it was following your IEP when you got in trouble. If the school wasn't following your IEP at the time, then they usually can't expel you. During this meeting, the school can also talk about ways they could help you so you don't get in trouble again, like giving you a "functional behavioral assessment" (FBA), or changing your "behavior intervention plan" (BIP). These are fancy words to describe ways that the school can help you not break the rules again. This meeting has to happen within 10 days of the school deciding to expel you.

- If the school suspends you or takes you out of your classroom at all for more than 10 days total in one school year, then the school has to hold a manifestation determination meeting.
- If the school suspends or expels you, it still has to follow your IEP and teach you somewhere else.

Can my school discriminate against me because of my disability?

NO. Your school cannot discriminate against you because of your disability.

Here are some examples of ways that schools discriminate against students with disabilities:

- Not allowing you to go to a school or a school program like after-school tutoring because of your disability
- Not giving you the same chance as students without disabilities to be in in school programs
- Not giving you the accommodations you need
- Harassing or bullying you because of your disability (or not stopping other students from harassing or bullying you)
- Making you follow different rules than students without disabilities
- Using too much physical force because of your disability
- Teaching you somewhere different from students without disabilities unless there is a good reason

If you think your school has discriminated against you can:

1. Contact your 504 or ADA Coordinator at the school
2. File a complaint with the Office for Civil Rights ^{xix}

Can I be bullied or harassed because of my disability?

NO. Both Section 504 and the ADA say that students with disabilities cannot be bullied in school. If the school knows you are being bullied because of your disability it should check and make sure this does not happen again.

When bullying or harassment is "severe or pervasive," then it is illegal for the school to let it keep happening. This usually means that the bullying has been happening for a long time, the school has

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known about it for a while, and it has hurt you a lot. In this case, if the school lets it keep happening, it could be discriminating against you. If this is happening you can file a complaint with the Office for Civil Rights^{xx} or CA Department of Education.^{xxi}

The IDEA says that when bullying makes it hard for you to learn, the school has to hold a meeting with your IEP team to discuss the issue and devise a plan to stop the bullying.

You also have the right to be free from bullying and harassment in schools based on California's anti-harassment laws. To learn more about your rights at school when facing bullying or harassment, check out our *Know Your Rights on Harassment and Bullying* page at <https://www.myschoolmyrights.com/harassment-and-bullying/>.

Am I protected in after school programs, sports, and field trips?

YES. The ADA doesn't just protect you in any the classroom, it protects you in other activities like sports even if they aren't in your IEP or 504 plan. Schools have to make changes to those activities so that you can participate. This doesn't mean a coach has to put you on the team, but the coach can't keep you out just because you have a disability. If you make the team, then the coach has to make changes for you. This could mean letting you miss practices for a doctor's appointment or getting special equipment. Your school also has to keep you in an "integrated setting," so they can't make you ride a different bus to a field trip or sit in the library during an after-school activity.

Do the school buildings have to be physically accessible?

YES. The ADA and Section 504 say that that most schools have to change their buildings to make sure that you can get around and use equipment. This means that the school has to have easy to use doorknobs and water fountains ramps, elevators, and wide doorways. Even if schools don't have to make these specific changes, they still have to make other changes as long as it doesn't cost a lot of money. This can mean making a small ramp in sidewalks, moving shelves and furniture, widening doors, or putting in easy to use doorknobs. The school also has to provide classes and other educational activities in places that you can get to. This can be done by moving a class to the first floor or to a different building.

Do I have these same rights at a college or trade school?

SOME. The IDEA does not apply when you enroll in college or other programs you attend after graduating from high school, and you do not have the right to an IEP, 504 plan, or a free appropriate public education after high school. However, colleges and trade schools still have to follow Section 504 and the ADA. This means that schools cannot discriminate against you because of a disability, and they still have to accommodate your disability. Some of these accommodations include extra time for tests or assignments, testing in a private room, someone to take notes for you, letting you use laptop in class to take notes, or letting you pick your schedule first. At a college or trade school, you need to request accommodations through the school's disability services office; the school usually does not have to give you academic accommodations that you have not requested.

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RESOURCES FOR MORE INFORMATION

- Disability Rights Education & Defend Fund: dredf.org/Special-Education/Students-K-12/
- California’s Anti-Bullying Laws: www.stopbullying.gov/resources/laws/california
- Disability Rights California’s Special Education Manual: <https://serr.disabilityrightsca.org/>
- Wrightslaw – Special Education Resources: www.wrightslaw.com/



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ⁱ The Supreme Court recently decided that these goals must be “appropriately ambitious” and “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” This means that your educational program must offer more than minimal progress. If you have a modified general education curriculum because of your disability, your curriculum must still be challenging enough. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

ⁱⁱ 34 C.F.R. § 300.114

ⁱⁱⁱ 34 C.F.R. § 300.343

^{iv} <https://www.dor.ca.gov/Content/DorIncludes/documents/StudentServices/DR203%20Student%20Services%20Request.pdf>.

^v <https://www.dor.ca.gov/Home/StudentServices>.

^{vi} Disability Rights Education and Defense Fund, *IEP Assessment Letter*, <https://dredf.org/special-education/sample-letters/>.

^{vii} <https://dredf.org/wp-content/uploads/2016/02/IEE-Independent-Educational-Evaluation.docx>

^{viii} <https://www.cde.ca.gov/sp/se/qa/cmplntproc.asp>.

^{ix} <https://www.cde.ca.gov/sp/se/qa/documents/sedcomplaintform.pdf>

^x Disability Rights Education and Defense Fund, *Tips for Writing a Special Education Compliance Complaint*, <https://dredf.org/special-education/sample-letters/>.

^{xi} <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

^{xii} <https://ocrcas.ed.gov/welcome-to-the-ocr-complaint-assessment-system>

^{xiii} <https://kids-alliance.org/programs/education/>

^{xiv} <https://www.disabilityrightsca.org/contact-us>

^{xv} <https://dredf.org/special-education/students-k-12/>

^{xvi} <https://www.learningrights.org/education-rights-clinics>

^{xvii} <http://mhas-la.org/programs/>

^{xviii} <http://www.publiccounsel.org/pages?id=0061>

^{xix} <https://www.myschoolmyrights.com/complaint-ocr/>

^{xx} <https://ocrcas.ed.gov/welcome-to-the-ocr-complaint-assessment-system>

^{xxi} <https://www.cde.ca.gov/sp/se/qa/documents/sedcomplaintform.pdf>