

Know Your Rights

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Although all students with disabilities under IDEA/s.115.76 also meet the criteria for protection under Sec. 504, a *limited* number of students are not considered students with disabilities under IDEA/s.115.76 but *do* meet the criteria for protection under Sec. 504. Examples of these situations include students with health conditions (for example, diabetes or asthma) or a mobility impairment (for example, paraplegia) who have an impairment that substantially limits one or more major life activities but who are determined not to need special-education services in accordance with the Individuals with Disabilities Education Act (IDEA).

Students qualifying only under Sec. 504 criteria are entitled to the accommodations and services necessary for them to benefit from all educational activities available to other students, including state (and district) assessment activities. For these students, appropriate accommodations and services must be documented in an Individualized Accommodation Plan (IAP), including any accommodations necessary for participation in assessment activities.

IDEA is designed to ensure that children and young adults with disabilities receive the educational services that are best for them. So, as

you would expect, there are some eligibility requirements. Let’s take a look at the basic requirements of IDEA (Table 1.1).

Table 1.1. Basic Requirements of the Individuals with Disabilities Education Act (IDEA)

Component	Legal Requirements	In Other Words
Eligibility based on need	IDEA defines special education as specifically designed instruction, at no cost to the child’s parents, to meet the unique needs of a student with a disability (20 U.S.C., §1401[3]).	Special education is for children whose needs cannot be met in a regular classroom.
Where special education is provided	Special education occurs in the classroom, student’s home, hospitals and institutions, and other settings.	Wherever there are students with special-education needs.
Components of special education	To meet a student’s needs, it is usually necessary to provide more than individualized instruction by supplementing instruction with “related services,” namely, the services that are necessary to assist the student to benefit from special education (20 U.S.C., §1401[22]).	If a student needs special services, they will be provided. There is a list of special services in Chapter Seven.
Category and function of special needs to be eligible for special needs	There is a two-part standard for eligibility: (1) the categorical element—the student must have a disability; and (2) the functional element—the disability must cause the student to need specially designed instruction.	A student is eligible for special education and related services if the student has a disability and, because of the disability, needs specially designed instruction.

Step 1: The Categorical Element

To meet the categorical element of IDEA eligibility, the legislation defines the categories of disabilities it serves. They are defined in Table 1.2.

Table 1.2. Categories of Disabilities for Children Ages Six Through Twenty-One

Specific Learning Disabilities	Definition
Emotional disturbance	A mood disorder; an affective disorder in which the person tends to respond excessively and sometimes violently.
Mental retardation	Subnormal intellectual development as a result of congenital causes, brain injury, or disease and characterized by any of various cognitive deficiencies, including impaired learning, social, and vocational ability. Also called <i>mental disability</i> .
Multiple disabilities	A person that has more than one disability.
Deaf-blindness	A person with little or no useful sight and hearing.
Autism	A neurodevelopmental disorder characterized by markedly abnormal social interaction, communication ability, patterns of interests, and patterns of behavior.
Other health impairments	Other health issues that affect a person's ability to learn and his or her social or vocational abilities.
Orthopedic requirements	A disorder of the muscles or bones that requires an assistive device(s) to enable the person to function in part or completely.
Traumatic brain injury	Also called acquired brain injury, intracranial injury, or simply head injury; occurs when a sudden trauma causes damage to the brain. Symptoms of a TBI can be mild, moderate, or severe, depending on the extent of the damage to the brain. Outcome can be anything from complete recovery to permanent disability.
Speech or language impairments	A type of communication disorder in which "normal" speech is disrupted. This can mean stuttering, lisps, vocal dysphonia, and so on.
Hearing impairments	Little to no useful hearing ability.
Visual impairments	Little to no useful seeing ability.

The same categories apply to children starting at age three, but for children ages three through nine, the state may also give special education to children that meet only the functional requirement. This is very important to remember: IDEA states that kids ages three through nine can receive special services for learning problems that fall outside of the scope of the defined disabilities. These children are eligible for services if they are experiencing developmental delays in the following areas:

- *Physical development:* such as a physical disability that is diagnosed by a physician.
- *Cognitive development:* characterized by many factors that are listed in the developmental checklists found in Appendix E.
- *Communication development:* isn't speaking clearly or is displaying an obvious speech disorder such as a lisp.
- *Social development:* these are usually characterized by behavioral problems and/or impulse control.
- *Emotional development:* this often goes hand-in-hand with social development and has many of the same indicators: behavioral problems or impulse control.

Step 2: The Functional Element

The primary component of the functional element of eligibility for special education is that your child demonstrates a need for special education. In other words, your child's disability or delay causes him to need specially designed instruction.

The evaluation activities and procedures that your child will take part in are used to determine:

- Whether your child has a disability that adversely affects educational performance

- Whether your child requires special education and any necessary related services
- Whether your child requires supplementary aids or services
- The nature and extent of special education, related services, or supplementary aids and services that your child needs

The functional requirement sounds subjective, but there are many ways to tell whether a child will benefit from special instruction. Your local school district will evaluate your child in all areas related to the suspected disability in order to identify what special education and related services are needs. The areas of evaluation should include, if appropriate:

- Health
- Vision
- Hearing
- Social skills
- Emotional status
- General intelligence
- Academic performance
- Communication skills
- Motor abilities

Evaluation activities include the following:

- Determining your child's eligibility and need for special education and related services
- Measuring your child's present levels of functioning, needs, abilities, and limitations
- Drawing conclusions about the significance of findings as they relate to the general education curriculum and instructional programming

- Providing information that will assist the Individual Education Plan (IEP) team in making decisions about the special-education program, including necessary related services, assistive technology needs, extended school-year services, and support services

Testing for Disabilities

Each potential disability has an array of tests that help professionals evaluate:

- Whether your child has disabilities
- The extent to which to your child's disabilities exist, and
- How to best assist your child in overcoming her disabilities.

Physical Disabilities

This book is about the educational accommodation of students with special needs. Your child's doctors are the only people qualified to speak to the medical existence, degree, or other status of your child's physical disabilities. The recommendations made by medical professionals must be documented so that your child's school will be required to accommodate them. All services related to physical disabilities will be driven by physician recommendations. If your child's physical disability also entails learning disabilities, those will be diagnosed and assessed through a different array of instruments.

Learning Disabilities

Learning disorders are first *informally flagged* by observing significant delays in your child's skill development. You or your child's teacher or physician may be the first to notice the delays. If your child is in elementary school, a rule of thumb is that a two-grade delay is usually considered significant. If your child is older, a two-year delay is not considered to be significant but a three-year delay is. The *actual diagnosis*

of learning disabilities is made by administering standardized tests that compare your child's abilities to what is considered to be a normal score for a child of that age.

I can hear you now: "Well, what are those tests, who gives them, and how do they score the answers?" The answers are as varied as the day is long. There are over three hundred diagnostic tests for learning disabilities. Your school district purchases the tests from the company that they feel is most reliable and with which their school psychologist is the most familiar. The school district will give you information about the specific tests they use; if they don't, you should ask for it. So, who and what is a school psychologist? This person is an educator who also has at least a master's degree in psychology and who is in charge of all testing and placement tests, procedures, and implementation of special services in a school district. The psychologist knows her stuff. She has taught, worked as a psychologist, and been trained to administer and interpret the assessments for every special-needs student in the school district.

Each type of learning disorder is unique, and the tests used to identify each of them and the degrees to which they exist are ordered on a case-by-case basis, like a prescription. That, coupled with the sheer number of tests, makes it impossible to describe each of them, but your school will give you information about them and you should ask as many questions as you feel are necessary to make you feel comfortable with the process. If you do not feel comfortable, you always have the right to pay for an outside evaluation. If that occurs, you will want to have a record of the tests your child has already been given. The categories of assessments are:

1. *Aptitude/cognitive ability*. A complete intellectual assessment with all subtests and standard scores reported is essential.
2. *Academic achievement*. A comprehensive academic achievement battery is essential, with all subtests and standard scores reported

for those subtests administered. The battery must include current levels of academic functioning in relevant areas such as reading (decoding and comprehension), mathematics, and oral and written language.

3. *Information processing.* Specific areas of information processing (for example, short- and long-term memory, sequential memory, auditory and visual perception/processing, processing speed, executive functioning, and motor ability) should be addressed.

Other assessment measures, such as classroom tests and informal assessment procedures or observations, may be helpful in determining performance across a variety of areas and should be a part of your child's diagnostic portfolio. Other formal assessment measures may be integrated with the categories above to help rule in or rule out the learning disability to differentiate it from neurological or psychiatric disorders. In addition to standardized tests, it is also very useful to include informal observations of the student during test administration; your child's behavior during testing can help the school psychometrist adjust for factors such as nervousness or lack of impulse control during testing when analyzing your child's performance.

Evaluating Children Under Age Three

If your child exhibits signs of a disability before age three, you will begin working with an early intervention team. The evaluation for early intervention generally starts with your child's pediatrician, and on referral to the special services coordinator for your area, your child will be evaluated on an individual basis. Your child will be evaluated by other doctors if physical disabilities are suspected, or by other professionals such as those described in the Testing section of this chapter. Your child must be demonstrating developmental delays in a combination of areas (and there is no magic formula here: it could be a severe

delay in one area or slight delays in a number of them) such as:

- Health
- Vision
- Hearing
- Social and emotional skills
- Cognitive development
- Motor skills
- Communication skills

Evaluation activities include:

- Determining your child’s eligibility and need for early intervention services
- Measuring your child’s present levels of functioning, needs, abilities, and limitations
- Drawing conclusions about the significance of findings as they relate to your child’s healthy development
- Providing information that will assist the school in making decisions when your child enters school about the special-education program, including necessary related services, assistive technology needs, extended school-year services, and support services

If your child is recommended for evaluation, you will begin working with a special services coordinator. If your child does have a special need, you will begin working with an early intervention team. Table 1.3 explains the differences between the two.

Evaluating Children Ages Three to Twenty-One

The evaluation group will develop the evaluation report that includes:

- The disability that requires special education and related services, if a disability exists

Table 1.3. Assistance Stages

Special Services Coordinator	Early Intervention Team
<p>They are employed by the state health department to meet the requirements of IDEA to serve children that are at risk before they enter the school system in the hopes of improving that child’s development. The coordinator is assigned to a geographic region that is based on populations (where it is a county in one area, it may be a portion of a school district in another). The special services coordinator is called into action when your physician recommends your child for further evaluation.</p>	<p>A team that includes your special services coordinator in which you and your family have a lot of input in deciding who becomes a member of the team and how they help your child and your family. When your child is formally diagnosed with a special need, the early intervention team is called in to help determine what services will best serve your child and your family.</p>

- How the disability or disabilities affects your child’s involvement and progress in the general curriculum, or for preschool children, in appropriate activities
- Recommendations to the IEP team with respect to special education and related services needed, materials or equipment, instructional and curricular practices, student management strategies, the need for services beyond 180 school days, and location of services
- Any necessary professional judgments and the facts or reasons in support of the judgments
- Special Education or IEP Team (ages three to twenty-one):

A team of educators, the school psychometrist and other professionals, including you, that is chosen and governed by your local school district. There is no special services coordinator as the school district now coordinates your child’s services.

The special-education building team is responsible for notifying parents of evaluation meetings. The special-education building team

Table 1.4. Special-Education Teams

Special-Education Evaluation Team a.k.a. the Individual Education Plan (IEP) Team	Special-Education Building Team
<p>When your child enters school with a disability or is diagnosed with a disability through the school system, you will be working with the evaluation team, more often called the IEP team, to determine what the test scores mean, if additional tests are needed, what special services your child may need in the regular classroom, and how much of his day he may be spending in a special-education classroom.</p>	<p>The special-education building team implements and documents all of the special services that are provided by the school. Diagnostic testing is coordinated by the IEP team and is administered by the school district; special services that are delivered through the building are coordinated by the building team. The building team is comprised of the regular classroom teacher (if your child spends part of her time in a regular classroom), the special-education teacher, a school counselor, and a building administrator. The special-education teacher is generally the team leader.</p>

is not an evaluation team (even though they will be a part of it), but should be considered to be more of an implementation team. Parents will be provided with a copy of the report on completion, and the special-education building team will implement it.

Eligibility

The evaluation group and the parent will determine whether the student is a special-education student. You will be provided with a copy of the evaluation report and the documentation of determination of eligibility.

Children Who Are Not Eligible

- Your child is not eligible if the determinant factor is a lack of instruction in English or limited English proficiency.
- Your child is not eligible when the determinant factor is a lack of instruction in reading or mathematics.

Children Who Are Eligible

Eligible children remain eligible for special-education services until one of three events occurs:

1. A reevaluation determines that your child no longer needs special-education services.
2. Your child meets the district's high school graduation requirements (and some schools are required to develop procedures for granting high school graduation credits for students with disabilities), or
3. Your child reaches age twenty-one. However, if your child's twenty-first birthday occurs after August 31, he continues to be eligible for special education and any necessary related services for the remainder of the school year.

Independent Educational Evaluations

If in this process you have been in legitimate (or illegitimate) disagreement with the evaluation or reevaluation of your child, you have the right to request an independent educational evaluation (IEE) at the school's expense. There will be some criteria for the outside evaluator to meet, such as that he must be

- Licensed, credentialed, or otherwise qualified in your state of residence to practice and to perform an evaluation in the specific professional discipline for which an IEE is sought
- Knowledgeable and experienced in evaluating children with similar disabilities
- Geographically located within your state, and
- Available to the district at a maximum fee that does not overly exceed the prevailing average for similar evaluations. This means that if the average fee in your area is \$70 per hour, this is what the school district is required to pay.

What's Next?

The evaluation process is complete and your child needs special-education services. Now what happens? The chapters that follow will tell you about the next stage in the process. If your child is under the age of three, you will receive an Individual Family Services Plan (IFSP), which is described in Chapter Two. If your child is age three or older, your child will receive an Individual Education Plan, which is described in Chapter Three. The next three chapters address the types of disabilities that you can receive services for: physical disabilities, learning disabilities, and behavior/social disabilities.

