

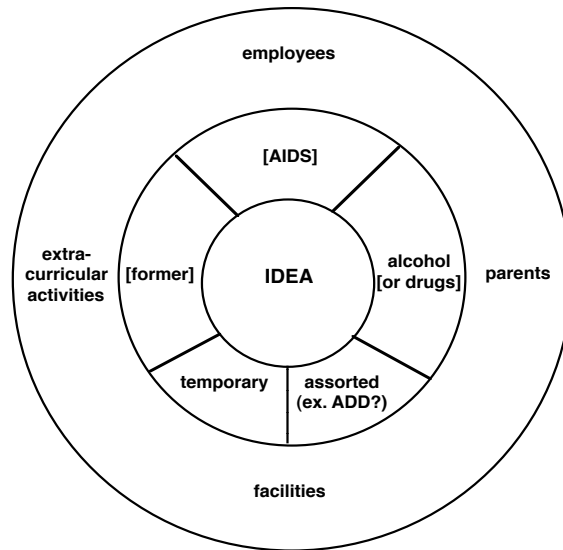
Building Blocks of Special Education Law: Pennsylvania

Perry A. Zirkel, Ph.D., J.D., LL.M.
University Professor of Education and Law
Lehigh University
Bethlehem, Pennsylvania 18015
(tel. 610/758-3239)

© 2011

The abbreviations in the various case blurbs (with PA-specific acronyms highlighted) include:

BIP	=	behavior intervention plan
CIC	=	clean intermittent catheterization
ED	=	emotional disturbance
ER	=	evaluation report
ESY	=	extended school year
FAPE	=	free appropriate public education
FBA	=	functional behavioral assessment
IEE	=	independent educational evaluation
IEP	=	individualized education program
IHO	=	impartial hearing officer
LRE	=	least restrictive environment
M-D	=	manifestation determination
MDT	=	multi-disciplinary team
NOREP	=	notice of recommended educational placement
PDE	=	Pennsylvania Department of Education
<i>pro se</i>	=	proceeding w/o attorney representation
RTI	=	response to intervention
RR	=	reevaluation report
SEA	=	state education agency



Ch. 16	Ch. 14	Ch. 15
	IDEA	Sec. 504/ADA

Circles:

Birds' eye view (from above): the fraternal twins of Sec. 504 and the ADA have broader coverage that includes but is not limited to that of the IDEA.

Blocks:

Lateral view: the "cooperative federalism"¹ allows state law to exceed, but preempts them from being lower than, the national minimum requirements of the IDEA and Sec. 504/ADA.

¹ See, e.g., *Evans v. Evans*, 818 F. Supp. 1215, 1223 (N.D. Ind. 1993).

1.0 Federal legislation and regulations

1.1 Individuals with Disabilities Education Act (“IDEA”)²

- 2004 legislation + 2006 regulations + 2008 amended regulations
- child find: collective + individual
- eligibility (2-pronged definition of disability)
 - initial evaluation, reevaluation, and IEE
- IEP: FAPE + related services + LRE
 - assistive technology services and devices
 - ESY
 - transition services
- IHO → judicial appeal
 - one or two tiers → concurrent jurisdiction
 - exhaustion doctrine
 - resolution session
 - “stay-put” (or status quo) provision
 - remedies: tuition reimbursement and compensatory education
 - attorneys’ fees + nonexclusivity
- discipline: M-D and FBA/BIP

1.2 Section 504 of the Rehabilitation Act (“Sec. 504”)

- disability: 1) a mental or physical impairment that limits 2) a major life activity 3) substantially
- FAPE: special or regular education and related services that provide commensurate opportunity

1.3 Americans with Disabilities Act (“ADA”)

1.4 ADA Amendments Act (“ADAAA”)

² Formerly called EHA, EAHCA, and P.L. 94-142.

2.0 State regulations - **Pennsylvania**

2.1 **Chapter 14** – corresponds to IDEA – effective 7/1/08

2.11 Limited additions based on federal law, including:

- NCLB standard for paraprofessionals – deadline 2010
- IDEA choice of permitting both severe discrepancy and RTI
- deadline of 60 calendar days for ER (except summer)
- deadline of 14 days for implementing IEP
- new case loads based on level of service
- retained age of 14 for transition plan
- expedited (i.e., by 2/28/08) ESY determination for severe disabilities
- refined provisions for restraints (e.g., definition, IEP meetings, parental consent, face-down prone, injuries requiring medical treatment)
- eliminated second tier (i.e., appeals panel)

2.2 **Chapter 15** – corresponds to § 504 (and the ADA) for students – unchanged

2.21 Adds category of “protected handicapped students”

2.22 Requires service agreement, with related services and reasonable accommodations

2.23 Includes procedural safeguards, including due process hearing

2.3 **Chapter 16** – specific to gifted students under state legislation for “exceptional” children – effective 7/1/08

2.31 Includes clarified GIEP procedures

2.32 Includes revised case load requirements

2.33 Includes on-site compliance monitoring

2.34 Does not change substantive standard for FAPE and lack of attorneys’ fees for prevailing parents

3.0 Supreme Court case law³

- 3.1 *Davis* (1979) - “otherwise qualified” (Sec. 504)
- 3.2 *Rowley* (1982) - FAPE (“appropriate” education)
- 3.3 *Tatro* (1984) - related services (CIC)
- 3.4 *Burlington* (1985) - tuition reimbursement (3-step test)
- 3.5 *Arline* (1987) - “handicapped” (Sec. 504)
- 3.6 *Honig* (1988) - dangerousness exception to “stay-put”
- 3.7 *Zobrest* (1993) - parochial schools⁴
- 3.8 *Florence County v. Carter* (1993) - tuition reimbursement (second step)
- 3.9 *Garret F.* (1999) - related v. medical services
- 3.10 *Sutton* (1999) and *Toyota* (2002) – “disability” under Sec. 504 and ADA⁵
- 3.11 *Schaffer* (2005) – burden of proof
- 3.12 *Arlington Central* (2006) – expert witness fees
- 3.13 *Winkelman* (2007) – parents right to proceed *pro se* in federal court
- 3.14 *Forest Grove* (2009) – tuition reimbursement when no prior sp. ed. enrollment

4.0 Legal forums for complaints or cases

- 4.1 school district’s Sec. 504/ADA coordinator and grievance procedure
- 4.2 PDE’s Division of Compliance - tel. 717/783-6137⁶
www.pde.state.pa.us/special_edu
- 4.3 impartial hearing officers - Office for Dispute Resolution (tel. 800/222-3353)
www.odr.pattan.net
- 4.4 U.S. Dep’t of Ed’s Office for Civil Rights (“OCR”) - tel. 215/656-8541
www.ed.gov/offices/OCR

³ Other pertinent Supreme Court cases, which were legislatively reversed, were *Smith v. Robinson* (1984)(attorneys’ fees and exclusivity) and *Dellmuth v. Muth* (1989)(11th Amendment immunity). This list also does not include the recent 4x4 ruling in *Tom F.* (2007) because it did not establish a national precedent, and *Forest Grove* (2009) resolved its issue. See attached article for summary of the major decisions prior to the last two.

⁴ See also *Kiryas Joel* (1994).

⁵ Reversed by the ADAAA.

⁶ Also CONSULTLINE (800/879-2301) and, for infants and toddlers, CONNECT Information Service (800/692-7288).