

From Entitlement to Eligibility: Differences Between Public Education and Post-Secondary Education for Individuals With Disabilities

There are three federal laws that apply to students with disabilities in public school (grades K-12).

- 1) The **Individuals with Disabilities Improvement Act (IDEIA 2004)** describes what students are entitled to receive during their public school career. **IDEIA 2004** requires public schools to provide free, appropriate, public education (FAPE) in the least restrictive environment. The law emphasizes special education, specially-designed instruction, and related services to meet students' unique needs and prepare them for further education, employment, and independent living.
- 2) The **Rehabilitation Act of 1973**, as amended, (**Section 504**) is a civil rights law that was passed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. **Section 504** of this law, prohibits the denial of public education participation, or enjoyment of the benefits offered by public school programs because of a child's disability.

Once students graduate or age-out of the public school system, they must meet eligibility criteria for

services that they will need as adults living in the community.

- 3) Persons with disabilities are covered by the **Americans with Disabilities Act of 1990 (ADA)** as amended in 2008. The **ADA** is also a civil rights law which provides persons with disabilities protection from discrimination based on disability. **ADA** ensures that no otherwise qualified person with a disability is denied access to, benefits of, or is subject to discrimination solely on the basis of disability.

Parents/guardians and students need to understand that the change from entitlement to eligibility for services occurs once the student leaves the public school system and enters the adult world. In Pennsylvania, this occurs when a student is between 18 and 21 years of age. **Entitlement** (IDEIA 2004) and **Eligibility** (Rehabilitation Act/Section 504 & ADA) are different laws with different requirements for services. The following pages provide a general comparison of the differences between these laws as they relate to the services a student receives in public school (entitlement) versus post-secondary education (eligibility) and not intended to provide legal advice.

Differences in Laws and Definitions

Public School

- Eligibility for an Individualized Education Program (IEP) is guided by federal and state regulations for secondary education according to the IDEA 2004, which is an education law.
- **Definition:** Covers all school-aged children (preschool to graduation ages 3 to 21) who fall within one or more specific categories of qualifying conditions and who need special education and related services.

Post-Secondary

- Disability determination is guided by the Americans with Disabilities Act Amendments (ADAAA) 2008 and Section 504 of the Rehabilitation Act, 1973 (amended, 1978). This is a civil rights law, not an education law.
- **Definition:** a physical or emotional impairment that substantially limits a major life activity.

Who is Responsible for Identification?

Public School

- The school is responsible for identifying students having difficulties.
- The school conducts an assessment or evaluation.
- Regulations allow the evaluation team to determine which assessments are performed for the evaluation.
- After the evaluation is completed, the school schedules a meeting with the IEP team including the student and/or parent to determine what services will be provided.
- The regulations stipulate that the school is fiscally responsible for the evaluation.

Post-Secondary

- In order to receive services, the student, not the parent, must self-identify to the appropriate person or office in order to receive accommodations.

- The student must submit the appropriate documentation to the designated office at the university or college. The documentation submitted must demonstrate that the individual's present functional impairment significantly impacts a major life activity. This is not merely a diagnosis. The documentation must support the specific requested accommodation.
- Each post-secondary school can determine reasonable documentation guidelines and these guidelines may differ slightly from school to school.
- The student is responsible for following the procedures for obtaining services and submitting documentation that adheres to the schools particular documentation guidelines.
- The student, not the school, is responsible for assessments and evaluations.

Differences in Determination

Public School

The term "child with a disability" means a child with at least one of the following conditions and a need for special education and related services:

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| Autism | Serious emotional disturbance |
| Deafblindness | Orthopedic impairment |
| Deafness | Multiple disabilities |
| Hard of hearing | Traumatic brain injury |
| Mental retardation | Specific learning disabilities |
| Visual impairments/blind | Other health impairments |
| Speech or language impairments | |

Post-Secondary

- Disability determination is not tied to the diagnosis (e.g., "I have AD/HD, therefore, I need extra time."). The individual seeking services must provide documentation to determine disability status.

- Once disability status has been determined, reasonable accommodations are determined in an interactive process on a course-by-course and case by case basis.
- The documentation submitted must clearly support that the individual has functioning difficulties in a specific major life activity and the reasonable accommodation provides equal access.
- The documentation must support why the accommodation is tied to the specific functional impairment (e.g., "I have difficulty concentrating, processing information quickly, and focusing for long periods of time.>").
- **Special education services as defined in IDEA are not mandated to be provided in post-secondary education. Equal access and protections from discrimination are required to be addressed. Accommodations may be provided based on an individual determination in collaboration with the university.**

Differences in Definitions - Part 1

Public School

- **Accommodations:** Alterations that do not change the content of the curriculum or lower standards. They are intended to level the playing field and allow the youth to demonstrate what he or she knows.
- **Specially Designed Instruction:** SDI refers to the teaching strategies and methods used by teachers to instruct students, which may include the following:
 - Adaptations: Adjustments in teaching or instructional techniques with the same lesson goals and objectives (e.g., limiting the number of math problems, but the content remains the same).
 - Modifications: Changes that create an alteration in the content of curriculum.
 - Services: Personal care attendant, aide in the classroom, which may include related services such as: PT, OT, AT, S/L, transportation, etc.

Post-Secondary

- **Reasonable Accommodations** are intended to ensure that qualified individuals with disabilities have equal access within a course. The basic premise is to level the playing field.
- Instructors or professors teach the same content to all students and are not required to make adaptations to teaching techniques.
- Instructors or professors are required to provide equal access to the information within a course, but alteration in the content of the curriculum is not required.
- Schools do not have to provide alterations that would fundamentally change the educational program or academic requirements that are essential to a program of study.
- Post-secondary education is not mandated to provide special education and related services.

Differences in Definitions - Part 2

Public School

- **Accommodations** may include: Extended time or unlimited time to take tests or quizzes, clarification on test questions, word banks, taped text books, adaptive technology, etc.
- **Adaptations:** Limiting the number of problems or questions on tests, teachers modifying teaching style or method, etc.
- **Modifications:** Second language exemptions, withdrawal from specific skills, individualized expectations and materials, reducing the difficulty of assignments, reducing the reading level, etc.
- **Services:** Personal care attendant, aide in the classroom, which may include related services such as: PT, OT, AT, S/L, transportation, etc.

Post-Secondary

Reasonable accommodations may include:

- **Academic Adjustments:** Extended time (50 percent or 100 percent) for tests, priority registration, etc.
- **Auxiliary Aids:** Adaptive equipment, assistive technology, FM systems for the hearing impaired, electronic textbooks, sign language interpreters, etc.
- **Services:** Readers, note takers, test proctors.
- **Modifications:** Removal of architectural and technological barriers.
- Reasonable accommodations do not include adaptations of a personal nature such as personal care aids, hearing aids, computers for personal use, tutoring, etc.

Differences in Service Delivery

Public School

- Individualized Education Program (IEP) dictates the accommodations, modifications, services and activities for an eligible student.
- Parents/guardians must sign the *Notice of Recommended Educational Placement (NOREP)* and agree to accommodations, modifications, services and activities within the IEP.
- The youth may or may not be involved in the decision process regarding the IEP.
- Parents can ask for changes or alterations to an IEP according to state and federal regulations.

Post-Secondary

- IEPs are typically **not** accepted as documentation and are **not** used in post-secondary education.
- Instead of IEPs, eligible students receive accommodation letters.
- Students must ask in a timely manner for accommodations every semester from the designated person or office.
- Students usually are asked to make an appointment with their instructor or professor to submit their accommodation letter.
- Self-advocacy is necessary to obtain accommodations.

Differences in Rights

Public School

- Under the IDEA, the child's parents have authority regarding the child's educational rights while the child is in education.
- Evaluations and assessments of disability are done with parental/guardian consent and prior written notice. There is no charge for these evaluations.
- Parents/guardians are involved in all decisions related to the IEP and typically sign the IEP denoting attendance at the IEP meeting.
- Accommodations, special education (specially designed instruction), and related services are determined with input from the parents during the IEP meeting.
- Throughout the school year, parents/guardians are provided with progress reports (including a report card) documenting progress on the student's measurable goals.

Post-Secondary

- Parent's rights change once a student enters post-secondary education.
- Privacy laws may not allow post-secondary staff to discuss a student's disability or services with parents unless provided written permission from the student.
- The student, not the parent, is now in the driver's seat and makes requests for services and accommodations.
- Students are responsible for keeping track of their progress in their courses.
- Parents are typically not provided with academic progress or even grades.

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