



May 2019

Governance Brief

Special Education and the Law

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Introduction

School board members are responsible for helping ensure that their districts and county offices of education (collectively known as local educational agencies or LEAs) provide students with disabilities the free and appropriate public education to which they are entitled.

To help with that process, this CSBA brief provides board members with a short history of special education in the United States and then explains the laws that govern the provision of special education and related services for children and youth with disabilities. This includes legal mandates and requirements—in particular, the Individuals with Disabilities Education Act (IDEA).

Familiarity with these laws and requirements is critically important to the work of trustees, as nearly 775,000 California students from birth through age 21 receive special education and related services.¹ LEAs and their boards ensure that these students receive a rigorous education and develop socially, emotionally, and intellectually to their fullest capacity.

Given the complexity of the legal issues surrounding special education, the information included in this brief is not exhaustive and does not constitute legal advice. Board members should consult with legal counsel for specific guidance.

Background

At first, the American education system had no federal mandates or guidelines for how to educate children with disabilities. But there were parents, teachers, and other professionals (such as physicians) who recognized that regardless of any disabilities, these children were capable of learning.

In this brief you will find:

- » Information about the Individual with disabilities act, including its background and evolution
- » Details and definitions under Parts A, B, C, and D of IDEA
- » A summary of the legal requirements that IDEA places on local educational agencies, including those under Part B and C
- » Information about additional federal legislation affecting students with disabilities, including Section 504 of the Rehabilitation Act, The Americans with Disabilities Act, The Carl D. Perkins Act, and the Workforce Investment Act
- » Information about how California law is aligned with and supports IDEA and other federal education requirements
- » Questions for board members to consider

In the second half of the 1900s, parents of children with disabilities organized locally and advocated nationally for consistent and equal treatment for their children. At the same time, a growing interest in the rights of women and in racial equality provided a context, language, and momentum for these parents—and their advocacy efforts on behalf of children with disabilities were incorporated into the civil rights movement.²

The Individuals with Disabilities Education Act

Two landmark district court rulings in 1972 guaranteed the rights of children with disabilities to an education: *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* and *Mills v. Board of Education of District of Columbia*. These cases secured important legal precedents for protecting the educational rights of children with disabilities.

Three years later, in 1975, President Gerald Ford signed into law the Education for All Handicapped Children Act, also known as Public Law 94-142. The law's original intent was (a) to ensure the rights of students with disabilities to a public education and (b) to provide resources to help states deliver on this right. The law's authors understood that it would cost more to educate children who are blind, for example, because they would need accommodations such as books in Braille, special instruction in learning to read Braille, and mobility support.

While there have been substantial shifts in its specifics, the law fundamentally remains unchanged: public schools must provide children with disabilities the proper supports, services, and accommodations to ensure these students receive a free and appropriate public education and have the same access to education as their non-disabled peers.

Schools are also required to provide this education in the least restrictive environment (LRE), which means that a student who has a disability should have the opportunity to be educated with peers without disabilities to the maximum extent appropriate.

The Evolution of IDEA: From Access to Meaningful Benefit

Public Law 94-142 was amended in 1986 (Public Law 99-457), expanding the rights of children with disabilities by requiring states to provide programs and services to children from birth to age 3. It was amended and renamed as the Individuals with Disabilities Education Act in 1990, amended in 1997, and then again as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), though the law is still referred to by most as IDEA).

These reauthorizations changed the focus of the law from a basic assurance of "access" to a more challenging focus on "meaningful benefit" for students with disabilities, partly in response to persistently poor post-school outcomes. Teachers and school administrators now needed to "look to the

general education curriculum as the standard for all; focus on improved outcomes for students with disabilities and not just on process; [and] support students with disabilities to obtain results in elementary and secondary school as well as access to postsecondary education and employment."³

Four Principal Parts of IDEA

The 1997 and 2004 reauthorizations of IDEA maintained the law's original intent: that students with disabilities were guaranteed an individually designed educational program that would allow them to learn in the least restrictive environment possible.

The fundamental principles and parts of that law still stand:

- » **Part A** establishes the purpose of IDEA: "To ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."⁴ Part A also includes definitions of important terms.
- » **Part B** mandates certain activities in exchange for federal IDEA money. Any entity responsible for educating children and youth (e.g., school districts, county offices of education, direct-funded charter schools, and Special Education Local Plan Areas [SELPA]) must educate students with disabilities from ages 3 through 21 (or until they graduate from high school with a regular diploma, if that happens first). Part B also spells out the guidelines for that education (see page 3 for more information on Part B). Parents are granted legal due process for the rights outlined in Part B of IDEA.
- » **Part C** establishes guidelines for providing services to children from birth to 3 years of age and their families. These services—known as *Early Start* in California—include an evaluation for the presence of a disability and support for the child and the child's family through a variety of developmentally appropriate early intervention services in response to the disability or to a developmental delay. Parents are granted legal due process for the rights outlined in Part C of IDEA. Part C also charts steps to support children and families in transitioning into Part B services when the children who are receiving services turn 3 years old.
- » **Part D** describes grants, programs, and activities to improve educational outcomes for students with disabilities and their families. These include parent centers

that offer training and resources that make it possible for parents and family members to better support the educational needs of their children in collaboration with educators. Other activities involve professional development grants and projects to support the ongoing education of administrators, teachers, and other school staff. Additional programs under Part D are designed to support students with disabilities to successfully transition to adult life and independent living.

IDEA Requirements in Context

Children and youth identified as having a disability enter the special education system through a systematic process of evaluation. A child who enters school with a confirmed disability will most likely have been receiving services from Early Start (Part C) providers. In such cases, parents or guardians and educators will have developed a plan to transition the child from Early Start services to Part B (LEA) services at age 3. If the child did not receive Early Start services, parents will sign an assessment plan and begin the process of evaluation.

For a child who is struggling and not making educational progress, the following process is used to determine what, if any, special education and related services are appropriate:

1. A teacher, parent, or legal guardian can request that the child be referred to the school's Child Study Team or Student Support Team⁵ to gather information and develop a plan of strategies for helping the child be more successful.
2. If the strategies do not result in the child's reasonable progress, the team may recommend a referral for an evaluation to determine if a disability is the cause. At any point, a parent can formally request this evaluation. IDEA gives the school district the responsibility to recommend an evaluation if there is a suspected disability.
3. When the parent consents to (or requests) this evaluation, the school staff develops an assessment plan, and an Individualized Education Program (IEP, see page 4) meeting is scheduled. The timeline must adhere to legal guidelines.
4. If the evaluation confirms the presence of a disability *and* the child's need for specialized services or supports, an IEP plan is developed and the process of providing the child with special education begins. Once the IEP plan is developed and provided to parents, they have 30 days to respond.

5. Once approved, the IEP plan is implemented and revisited at least yearly to evaluate the child's progress toward his or her annual goals; adjust goals based on that progress and on any new or unresolved needs; and determine that the supports, modifications, accommodations, and services in the IEP are reasonably designed for the child to "advance appropriately toward attaining the annual goals," and when possible, "be involved in and make progress in the general education curriculum."⁶
6. Schools must report on the progress the child is making toward his or her goals at each of the reporting periods in the general education calendar. The language of IDEA reads: "concurrent with the issuance of report cards."⁷

The Major IDEA Requirements: Part B

Six major requirements in Part B of IDEA shape the "what" and "how" of special education in public schools:

1. **Free, Appropriate Public Education.** The requirement of a free, appropriate public education (FAPE) means that a child or youth with a disability will receive an education designed to meet his or her individual needs. These supports are written into a plan that is executed through the child's IEP. They can include such things as adaptive hearing equipment, speech and language services, or carefully scaffolded learning plans⁸ if a child has a learning disability. FAPE may also include free transportation to and from school, which could require an LEA to provide a specially equipped bus that can load a wheelchair, for example (a more detailed discussion of special education funding is addressed in a separate CSBA brief: *SELPA's and Special Education Funding in California*).

IDEA defines special education as "specifically designed instruction...to meet the unique needs of a child with a disability," while related services provide the support "required to assist a child...to benefit from" that instruction.⁹ The state must provide a child with disabilities an education in conformity with the child's IEP. Determining what is "appropriate," however, has been the subject of many court cases. In its 2017 decision, *Endrew F. v. Douglas County School District*, the Supreme Court interpreted FAPE as providing more than *de minimis* benefit. Instead, the Court found:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.¹⁰

- 2. Assessment.** A school must assess a child if a teacher or school staff member has a reason to believe that a child has an undiagnosed disability and the child's parents give their permission. When a parent requests a special education assessment (or evaluation), a school must assess if there is a reason to suspect a disability.

This initial assessment also gathers information about the child's strengths and any specific educational needs the child may have. When a disability is identified, this and other relevant information can be used to design an IEP and guide the child's placement (see next section). Only after this initial evaluation and development of an IEP—and only with parental consent—can any special education and related service be provided to the child.

As with all effective assessments, assessment for special education services is not a "one-and-done" event. Reassessments should occur when an LEA determines that the child's need for special education or related services, including academic achievement and functional performance, need revisiting or when a parent or teacher requests it. However, reassessments should not occur more than once a year, and at least once every three years, unless the parents and LEA agree otherwise. These assessments should answer two central questions: Have the child's needs, abilities, or learning difficulties changed since the initial assessment? In what areas is the child progressing (or not progressing)?

- 3. Individualized Education Program (IEP).** An IEP starts by describing the child's "present level of achievement, including explaining 'how the child's disability affects the child's involvement and progress in the general education curriculum.'" It also includes a formal plan that establishes reasonable learning goals for a child with a disability and specifies the services the school district will provide to help the child achieve these goals.

In *Andrew F. v. Douglas County School District*, the Court declined to establish a particular test of appropriateness of an IEP, because it recognized that "reasonably calculated" requires the informed judgment of school officials and the input of the child's parents or guardians. For those students with disabilities who are fully integrated into the general education program, the Court wrote that the IEP should typically be designed to enable a student to achieve passing grades and advance from grade to grade.

Key people in a child's school life make up the IEP team that creates this plan. These people include, at a

minimum, the child's parents; regular education teacher (if applicable); a special education teacher or service provider; an appropriately qualified representative of the LEA; an individual who can interpret the instructional implications of evaluation results; other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (at the discretion of the parent or the agency); and, whenever possible, the child with the disability.

After a formal plan is created, the team must meet annually and revise the IEP plan according to the progress the student is making toward the specified goals. Ideally, the student who is the subject of the plan will attend and participate in the IEP meeting. This participation helps to ensure that the IEP is student-centered,¹² which is particularly important as the team begins planning for the student's transition to adult living. Transition planning is a legal requirement, and formal transition plans must be in place by the time the student turns 16 years old.

- 4. Least Restrictive Environment.** The requirement of educating a child in the "least restrictive environment" (LRE) means that students with disabilities should, to the maximum extent appropriate, be educated with children who are not disabled, and only removed from the general education environment when the nature or severity of the child's disability is such that education in the general education classes cannot be achieved satisfactorily with the use of additional services. This allows students with disabilities to be educated in the classroom or learning setting where they are most likely to thrive academically, emotionally, and socially. Determining LRE requires careful judgment, insight, and understanding on the part of the IEP team members. It is important for LEAs to make available a continuum of placements and services so that parents and educators can fully respond to the growth and progress of each student, and the IEP can serve as a living vehicle for delivering a truly individualized education.

- 5. Parental Involvement.** The legislators who crafted the IDEA understood that parents and family members know their children best and can give schools important information about their children's strengths, weaknesses, and developmental background, along with insight into family factors that may affect a child's learning. As a result, the law mandates the meaningful involvement of parents or guardians and their full participation in all decisions that affect their child's education. The school must have the consent of students' parents or guardians

to assess their eligibility for special education services, as well as to provide these services.

6. Due Process. IDEA mandates that states safeguard—and schools follow—certain procedures when:

- » Assessing students with disabilities;
- » Determining their eligibility for special education services;
- » Ensuring appropriate educational placements, supports, and services for special education;
- » Providing a free and appropriate public education; and
- » Handling potential disputes.

These legal protections are provided for parents and children and youth with disabilities who believe that a student’s special education rights have been violated; this is called their “due process”—essentially, the processes that the law has put in place to address possible violations of a student’s rights to a free and appropriate public education and to special services and supports.

Due process includes complaint-resolution strategies, including complaint procedures, dispute resolution, mediation, and a formal hearing process. IDEA established these mechanisms to help parents and school personnel find agreement when people—parents, teachers, school administrators, services providers, or other members of a student’s IEP team—disagree over the contents or implementation of the IEP.

Part C: Early Start and Child Find

Research has confirmed the value of early intervention to address the effects of disabilities. The Early Start intervention and Child Find mandates in Part C of IDEA reflect a commitment to this benefit.

The law’s Child Find requirement involves maintaining “a system of notices, outreach efforts, staff training, and referral processes designed to ascertain when there are reasonable grounds to suspect disability and the potential need for special education services.”¹³ This obligation exists even if an LEA is not providing the special services for the child.¹⁴ The LEA is always responsible for ensuring that each child with a disability within its jurisdiction is accurately identified and ultimately receives appropriate services and education.

Infants and toddlers change and develop rapidly. Thus, the evaluation, identification, and service-delivery mechanisms

for very young children with a developmental delay or disability are different from those provided for older children. Early Start provides services that are primarily family focused, while Part B’s services are more child—and education—focused and begin when the child turns 3 years old. Additionally, eligibility criteria are different for Part C and Part B. Before children who receive services turn 3 years old, they are reassessed to determine their continued eligibility for special education using the Part B criteria.

Because of these differences, IDEA encourages all people and organizations involved on either side of a child’s transition from Part C to Part B services to carefully plan together so that the change in services is as seamless as possible. In California, the Department of Developmental Services (via Regional Center staff at the local level) and the California Department of Education (via public school staff) are responsible for ensuring the success of this transition, with the planning to begin no later than three months before a child’s third birthday.

Additional Legislation Affecting Students with Disabilities

Federal laws enacted in the past 50 years are intended to ensure that individuals with physical, intellectual, learning, and/or developmental disabilities have the same basic legal, civil, and human rights as every other citizen.

Other federal laws also protect students with disabilities from discrimination in public schools. Most often cited are:

- » **Section 504 of The Rehabilitation Act.** The Rehabilitation Act of 1973 (Public Law 93-112; amended in 1992) is a federal law that includes Section 504, a civil rights statute prohibiting discrimination based on disability¹⁵ in any program or activity that receives federal funding. In order to avoid discriminating, these programs and activities must accommodate people with disabilities to the same degree it meets the needs of individuals without disabilities.

While IDEA provides supports and services for children and youth with specific disabilities through *implementation* of an IEP, Section 504 focuses on *access* to education. Students do not need to have an IEP to be covered under Section 504 of the Rehabilitation Act. The law addresses only physical and mental impairments that “substantially [limit] one or more major life activities,” including (but not limited to) learning and behavior.¹⁶ A person who has allergies or respiratory problems, cancer, Tourette syndrome, or a communicable disease (e.g., HIV), or someone who is in recovery from alcohol or drug addiction may be

protected under Section 504 and require an accommodation plan. The law explicitly includes what it refers to as “hidden disabilities” not “readily apparent.”¹⁷

Section 504 requires that students be offered a free and appropriate public education in regular education classes, with necessary supplementary aids and services, to enable them to access the educational program. These may include, but are not limited to, accommodations for test taking, more time for completing assignments, modifications to the classroom environment, preferred seating, homework modifications, counseling, a behavior management plan, and/or transportation accommodations, as appropriate and based on the identified needs. Section 504 in the educational context requires procedural safeguards be provided to students and parents, and requires FAPE to be provided through an evaluation and team meeting process.

- » **The Americans with Disabilities Act.** The Americans with Disabilities Act of 1990 (ADA) primarily ensures people with disabilities have access to places, items, and information available to the public: physical access through ramps and curb cuts, for example; and informational access through the requirement that documents must be accessible through a screen reader, Braille, or large type. In all cases, schools, businesses, and public places must ensure that any person with a disability has access to their goods and services through any reasonable accommodation or modification.

For schools, the three basic concepts of ADA involve providing the following:

1. Reasonable accommodations to employees, students, and their family members with disabilities; for example, ensuring that a student in a wheelchair can get to class on time.
2. Extra aides, supports, and services that a person may need to communicate effectively and to access programs; for example, providing someone to translate the proceedings of a school board meeting into sign language for a parent who is deaf.
3. Reasonable modifications of policies, practices, and procedures; for example, making exceptions for a student who has hemophilia to a graduation requirement that all students take a physical education class that may involve student contact.

Two additional pieces of federal legislation have created systems of services and supports to prepare students with

disabilities to enter the workforce and realize financial and personal independence.

- » **The Carl D. Perkins Act.** The Carl D. Perkins Vocational and Technical Education Act of 1998 (reauthorized in 2018 as the Strengthening Career and Technical Education for the 21st Century Act) requires schools to inform parents of vocational education opportunities for their child by the time the child is in ninth grade. The law was initially designed to strengthen technical education in the country and to boost the economy. The authors of the law knew the workforce potential of students with disabilities and included the requirement that schools receiving Perkins money must provide vocational assessments, special services, and career and transition counseling¹⁸ to give students with disabilities a better chance to transition into adult life, independent living, and gainful employment.¹⁹
- » **The Workforce Investment Act.** The Workforce Investment Act (WIA) of 1998 is another federal law that promotes state-delivered services for students with disabilities. The act established a system of employment and training programs for youth (aged 14–21), adults (aged 18 and above), and dislocated workers. In 2014 the law was superseded by the Workforce Innovation and Opportunity Act (WIOA), which continues to provide employment services to disadvantaged individuals, specifically those who are low income and have “additional barriers to success,” such as a disability. These programs and services help students learn both hard and soft job skills; for example, how to solder and weld and how to collaborate with others. Many of these programs are delivered through California colleges (including community colleges) and universities.²⁰

California Law and Federal Law

When federal laws are reauthorized, California’s Legislature commonly adjusts its statutes and regulations to align with any new or revised federal law and regulations. After the most recent reauthorization of IDEA, California introduced legislation to ensure that its Education Code aligned with the federal law.²¹

California’s legal requirements for educating students with disabilities are written into the state’s statutes and Code of Regulations²² and support the requirements of IDEA.

Conclusion

The rights of children with disabilities to receive an education have evolved out of long-fought legal battles. Generations have struggled over what is the morally correct thing to

do within the framework of a democracy. The purpose of the legislation that resulted from this struggle—IDEA—is to ensure not just access to instruction but educational *benefit* from that instruction.

Laws typically provide only the floor of rights and services. School board members can create a higher ceiling of opportunity so that these students enter adult life with experiences of success and a vision of themselves as capable, contributing citizens—agents of their lives and active in the world.

Questions for Board Members

1. What are our plans for coordinating services and supports for toddlers with disabilities who are entering our preschool programs?
2. How are we monitoring the progress of our students with disabilities?
3. How do we include parents of students with disabilities in our LCAP development process?
4. How do we assess English learners with regard to special education and ensure that their issues are *learning* issues rather than resulting from their limited English language proficiency?
5. What are our plans for attracting and retaining staff who have the expertise to serve our students with disabilities and ensure that “every child [has] the chance to meet challenging objectives”?

Endnotes

- 1 California Department of Education. (2018). *Special Education – CalEdFacts*. <https://bit.ly/2XB1nbk>
- 2 The *Brown v. Board of Education of Topeka* Supreme Court Case ruling in 1954 outlawed any categorical exclusion or separation of children in public schools.
- 3 Stodden, R. (2011). New roles for all educators: Special education within the context of general education. *The Special EDge*, 24(3), 1. Retrieved from <https://bit.ly/2vxZtyi>
- 4 20 U.S.C. 1400 § [d][1][A].
- 5 Sacramento City Unified School District. (2015). *Student study team best practices manual*. Retrieved from <https://bit.ly/2K6YGHV>
- 6 *Endrew F. v. Douglas County School District*, 580 U. S. (2017).
- 7 Individuals with Disabilities Act: Section 300.320(a)(3). Retrieved from <http://bit.ly/2ubuvIX>
- 8 For more about scaffolding, see *What Is Instructional Scaffolding?* from The IRIS Center at <http://bit.ly/2w7vbOS>

- 9 20 U.S.C. §§1401 (29).
- 10 See Endnote 6.
- 11 See Endnote 9.
- 12 For more about student-centered IEPs, see *Students Get Involved!* from Center for Parent Information and Resources at <https://bit.ly/2qROava>
- 13 Martín, J. *Legal implications of response to intervention and special education identification*. RTI Action Network. Retrieved from <http://bit.ly/1sRYuA1>
- 14 Education Code 56300.
- 15 29 U.S.C. §794(a) and 34 C.F.R. §104.4(a).
- 16 34 C.F.R. §104.3(j)(1).
- 17 U.S. Department of Education, Office for Civil Rights. *The civil rights of students with hidden disabilities under Section 504 of the Rehabilitation Act of 1973*. Retrieved from <https://bit.ly/2JlYao3>
- 18 For more about the Perkins Act, see *Perkins Act* from the Perkins Collaborative Resource Network at <https://bit.ly/2qXCDLc>
- 19 For more about how LEAs can apply for Perkins funding, see *Perkins* from the California Department of Education at <https://bit.ly/2HjGA7D>
- 20 For more about WIOA and other programs available in California, see *Federal Grants Administration* from the California Department of Education at <https://bit.ly/2HT5R5U>
- 21 California Assembly Committee on Judiciary. (2012). *Bill analysis: AB 2370*. Retrieved from <http://bit.ly/2xzjPYI>
- 22 California Code of Regulations. *Title 5, Division 1, Chapter 3, Individuals with Exceptional Needs, sections 3000–3100*. Retrieved from <http://bit.ly/1pw3X8Q>

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