

## 9 LAWS RELATED TO DISABILITIES

Free legal assistance for detained immigrants

Technical assistance on laws, rules and regulations related to disabilities

ADA comparison chart

Protection Laws and Guardianship

National Disabilities Rights Network



[www.refugees.org](http://www.refugees.org)

*Protecting Refugees, Serving Immigrants,  
Upholding Freedom since 1911*



**Legal assistance is available for immigrants in detention, including for unaccompanied minors.**

**To find a list of Pro Bono lawyers in your state, go to:**

<http://www.usdoj.gov/eoir/probono/states.htm>

**Note: This service is intended for immigrants who are in removal proceedings.**

# **TECHNICAL ASSISTANCE ON LAWS, RULES & REGULATIONS RELATED TO DISABILITIES**

## **Disability and Business Technical Assistance Centers (DBTACs)**

These centers act as a “one-stop” central, comprehensive resource on Americans with Disabilities Act (ADA) issues in employment, public services, public accommodations, and communications. Each center works closely with local business, disability, governmental, rehabilitation, and other professional networks to provide ADA information and assistance, placing special emphasis on meeting the needs of small businesses. The DBTACs also provide technical assistance and training to states on IT accessibility as well as educational entities on their roles and responsibilities in providing accessible IT.

**1-800-949-4232 V/TTY**

**<http://www.dbtac.vcu.edu/>**



## A COMPARISON OF ADA, IDEA, AND SECTION 504

The Americans with Disabilities Act of 1990 (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973 represent three civil rights laws for people with disabilities.

### TYPE AND PURPOSE

<b>ADA</b>	<b>IDEA</b>	<b>504</b>
A civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, and public accommodations.	An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities.	A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.

### WHO IS PROTECTED?

<b>ADA</b>	<b>IDEA</b>	<b>504</b>
Any individual with a disability who: (1) has a physical or mental impairment that substantially limits one or more major life activities; or (2) has a record of such impairment; or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Further, the person must be qualified for the program, service, or job.	Children ages 3-21 in K-12 education who are determined by a multidisciplinary team to be eligible within one or more of 13 specific disability categories and who need special education and related services. Categories include autism, deafness, deaf-blindness, hearing impairments, mental retardation, multiple disabilities, orthopedic impairments, other health impairments, serious emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, and visual impairments	Any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Further, the person must be qualified for the program, service, or job.

### DOES IT PROVIDE FOR A FREE, APPROPRIATE PUBLIC EDUCATION (FAPE)?

<b>ADA</b>	<b>IDEA</b>	<b>504</b>
Not directly. However, (1) ADA protections apply to nonsectarian private schools, but not to entities controlled by a religious organization; (2) ADA provided additional protection in combination with actions brought under Section 504. Reasonable modifications to policies, practices, and procedures are required for eligible students with a disability. It also requires public and nonsectarian private schools to meet physical accessibility and barrier removal requirements.	Yes. A FAPE is defined to mean special education and related services. Special education means “specially designed instruction at no cost to the parents, to meet the unique needs of the child with a disability...” Related services are provided if students require them in order to benefit from specially designed instruction. States are required to ensure the provision of “full educational opportunity” to all children with disabilities. IDEA requires the development of an Individualized Education Program (IEP) document with specific content and required participants at an IEP meeting.	Not directly. However, it does provide for education comparable to that provided to students without disabilities. This may be defined as regular or special education services. Students can receive related services under Section 504 even if they are not provided any special education. Section 504 does require development of a plan, although a written document is not mandated. The Individualized Education Program (IEP) of IDEA may be used for the Section 504 written plan. Many experts recommend that a group of persons knowledgeable about the students convene and specify the agreed-upon services.

## IS FUNDING PROVIDED TO IMPLEMENT SERVICES?

### ADA

No, but limited tax incentives may be available for removing architectural or transportation barriers. Also, many federal agencies provide grant funds to support training and to provide technical assistance to public and private institutions.

### IDEA

Yes. IDEA provides federal funds under Parts B and C to assist states and local education agencies in meeting IDEA requirements to serve infants, toddlers and youth with disabilities.

### 504

No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible only under Section 504.

## PROCEDURAL SAFEGUARDS

### ADA

The ADA does not specify evaluation and placement procedures: it does specify provision of reasonable modifications to policies, practices, and procedures for eligible activities and settings. Reasonable modifications may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, modifying tests, reassigning services to accessible locations, altering existing facilities, and building new facilities.

### IDEA

A comprehensive evaluation is required. A multidisciplinary team evaluates the child, and parental consent is required before evaluation. IDEA requires that reevaluations be conducted at least every 3 years. For evaluation and placement decisions, IDEA requires that more than one single procedure or information source be used; that information from all sources be documented and carefully considered; that the eligibility decision be made by a group of persons who know about the student, the evaluation data, and placement options; and that the placement decision serves the student in the least restrictive environment. An IEP meeting is required before any change in placement decision serves the student in the least restrictive environment. An IEP meeting is required before any change in placement.

### 504

Unlike IDEA, Section 504 requires only notice, not consent, for evaluation. It is recommended that districts obtain parental consent. Like IDEA, evaluation and placement procedures under Section 504 require that information be obtained from a variety of sources of the area of concern; that all data are documented and considered; and that decisions are made by a group of persons knowledgeable about the student, evaluation data, and placement options. Section 504 requires that students be educated with their non-disabled peers to the maximum extent appropriate. Section 504 does not require a meeting for any change in placement.

## DUE PROCESS

### ADA

The ADA does not delineate specific due process procedures. People with disabilities have the same remedies that are available under the Title VII of the Civil Rights Act of 1964, as amended in 1991. Thus, individuals who are discriminated against may file a complaint with the relevant federal agency or Due in federal court. Enforcement agencies encourage informal mediation and voluntary compliance.

### IDEA

IDEA delineates specific requirements for local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a child.

### 504

Section 504 requires local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. It requires that parents have an opportunity to participate in the hearing process and to be represented by counsel. Beyond this, due process details are left to the discretion of the local education agency. It is recommended that districts develop policy guidelines and procedures.

## PROTECTION LAWS:

This page was prepared as a general overview of several laws enacted to protect people with disabilities. Guidelines and laws differ according to the state and county, therefore, contact your local social service agency to learn more.

### Age of Minority

This refers to when a person turns age 18 and is considered an adult, responsible for making decisions for themselves. If a student is in school at age 18, parents are no longer entitled to access certain types of information unless the student has provided written consent. For some culturally and linguistically diverse families, this may be difficult to comprehend. It may also pose challenges for parents who request assistance for their child/young adult including mental health, medical care, or social services. They may be unable to get help because the child is considered an adult and therefore, responsible for themselves.

### Child Protection laws

These laws and procedures vary by state and county. These laws were established to protect children under age 18 from maltreatment, including physical, sexual, verbal and emotional abuse, as well as neglect. Cultural conflicts have occurred over issues of medical neglect or traditional practices used to treat children. People from countries where it is culturally acceptable to use physical punishment to discipline their children are no longer able to do so when they live in the U.S. because of child protection rules. Child Protection laws mandate certain professionals who learn a child has been maltreated to make a report to the proper authorities. If reports are later found to be untrue, but are made in good faith, there are protections in the law for reporters. Check with your agency's rules on mandated reporting.

### Vulnerable Adult (VA) Act

This refers to laws that protect against the maltreatment and neglect of people with disabilities over age 18. Vulnerable Adult laws specify how to make a report, who must make a report, and what to report. Individuals with disabilities who live in licensed facilities (i.e. group homes, foster homes, nursing homes or state hospitals) are protected under the law. Also those who receive personal care or home health services are covered. The law applies

to adults with physical or mental impairments, or emotional dysfunction that prevents them from caring for their own basic needs or from protecting themselves from harm.

### Types of Maltreatment:

1. Abuse—including assault, or sexual exploitation or conduct by caregivers
2. Neglect—including financial, medical, or physical such as food, shelter or supervision. This may be done by a caregiver or self
3. Financial—withholding or disposing of a vulnerable adult's funds

### Who must report

The Vulnerable Adult Act, like the Child Protection laws, state that professionals who are responsible for caring for vulnerable adults, such as education staff, therapists, social workers, or other health care professionals, are mandated to report any form of maltreatment.

### Where to Report:

To file a report, contact your local social service agency. If an individual is at risk of imminent harm and is fearful of returning to their home, contact the police. Be ready to provide information that will include details about the perpetrator and the victim's personal information.

### Guardianship

For some people, their disability significantly impairs their ability to make decisions on their own behalf or manage their personal affairs (banking, legal decisions). In situations such as this, guardianship/conservatorship may be an option. According to the National Guardianship Association,

“Guardianship, also, referred to as conservatorship, is a legal process, utilized when a person can no longer make or communicate safe or sound decisions about his/her person and/or property or has become susceptible to fraud or undue influence. Because establishing a guardianship may remove considerable rights from an individual, it should only be considered after alternatives to guardianship have proven ineffective or are unavailable.”

For more information, go to [www.guardianship.org](http://www.guardianship.org) or contact your local government social service agency.

# NATIONAL DISABILITY RIGHTS NETWORK

The National Disability Rights Network (NDRN) is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States.

## **Mission:**

To create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination.

## **Services:**

- training
- technical assistance
- legal support
- legislative advocacy

## **Who is eligible for assistance?:**

The National Disability Rights Network serves a wide range of individuals with disabilities – including, but not limited to, those with cognitive, mental, sensory, and physical disabilities – by guarding against abuse; advocating for basic rights; and ensuring accountability in health care, education, employment, housing, transportation, and within the juvenile and criminal justice systems.

## **Contact a CAP or P & A program with questions related to:**

### Employment/Work:

- You want to know what help is available to get or keep a job.
- You want to know what will happen to your benefits if you go to work. Benefits may include Social Security, Medicaid, TANF, Medicare, Housing, Food Stamps, or Transportation
- You have transportation problems getting to and from work.

- You believe you were not hired or given a different job because of your disability.
- You were not given the help you needed to do your job.
- You think people at your job are bothering you or not treating you fairly because of your disability.
- Vocational Rehabilitation Services:
  - You need help getting services from VR (Department of Vocational Rehabilitation Services).
  - You have been told you cannot get help from VR to go to school or get a job.
  - No VR plan has been developed because you and your counselor disagree about your education or job goal or other help you need.
  - VR services have been denied or delayed.
  - VR is not helping you find a job.
  - Your VR counselor will not return your calls.
  - You got a new VR counselor and she/he wants to change your plan to get a job.

## **Criminal Justice**

If someone you know with a disability is in jail call the P&A in your state or territory to find out

- What their rights are
- How to get their medication to them
- What to do if you believe the person may be in danger of harming himself/herself

If someone you know with a disability is in prison call the P&A in your state or territory to find out

- What their rights are
- How they can get mental health services

- What they can do before getting out of prison to have their benefits, such as Social Security, restored

Nursing Homes, Schools, or other Treatment Centers)

- You believe staff is illegally taking your money
- You are being physically harmed
- Someone made you have sex when you did not want to
- Someone touched your body in a way that made you feel uncomfortable
- You have been verbally or emotionally bothered
- You are being given medication that you don't want to take
- You want a discharge plan
- You are not receiving adequate food, clothing or health care
- Community Living
- Getting your medications paid for
- Getting the health care services you need
- Renting a place to live
- Being evicted or having problems where you live because of your disability
- Getting transportation to get to go places
- Your Social Security or other benefits have been stopped
- You need a wheelchair, TTY, mobility cane or other aids to help you be independent

## Special Education

To learn about your child's special education rights and related services such as assistive technology:

- Your child has not been evaluated for services even though you requested an evaluation
- The school is not following the requirements of the child's IEP (Individual Education Program)
- The school has not held an IEP meeting within the last 12 months to review your child's IEP
- Your child's needs have changed and you have asked for another IEP meeting, but the school has not followed through
- Your child is getting suspended or expelled because of behavior related to his disability or other special needs
- You believe that the placement or services your child is receiving are not meeting her needs
- You believe that the placement or services recommended by the school are not going to meet your child's needs
- Your child has been placed in an alternative school or juvenile justice facility and is not receiving the special education services she needs
- The school has not provided the equipment such as computers or communication devices that have been recommended to assist your child in completing assignments

- People Living in Residential Facilities (Hospitals,

To find your state's CAP or P& A, go to <http://www.ndrn.org/> click on "GET HELP IN YOUR STATE"

