



# *Special Education Law*

*Reed Martin, J.D.*

## **SECTION 504 AND SPECIAL EDUCATION**

Parents often contact us about **Section 504** and **Special Education rights**. They have been told by their school that the IDEA is special education and that Section 504 deals with accommodations, or whatever.

We recently received a nice but critical email from a parent who claimed to have been embarrassed by using terminology that seemed to blur the differences between the IDEA (special ed) and Section 504.

The parent should not be embarrassed -- it is the public school that is confused.

**Section 504 requires a Free Appropriate Public Education (FAPE).  
See the Section 504 Regulations, at 34 C.F.R. 104.33(a).**

An Appropriate Education under Section 504 is "the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons...." 34 C.F.R. 104.33(b).

An Appropriate Education under Section 504 also must be "based upon adherence to procedures that satisfy the requirements of 34 C.F.R. 104.34, 104.35 and 104.36. 104.34 deals with educational settings like the IDEA. 104.35 deals with evaluation and placement like the IDEA. 104.36 deals with procedural safeguards. The procedural safeguards apply to students who need "special instruction or related services" and includes a system of procedural safeguards that includes notice, an opportunity to examine records, an impartial hearing with representation by counsel, and a review procedure.

We could go on and on, but we think the point is made. Those who say that IDEA is special ed and Section 504 is something else -- do not know what they are talking about. **"Regular education, special education, related aids and services, special instruction" are all under Section 504.** What part of that does your school fail to understand?

Further, the regulations under Section 504 were adopted into the statute of the Americans with Disabilities Act. So when your school says "Oh, the ADA. That is about removing architectural barriers. It isn't about special education" you can tell them **"No, the ADA requires special education, related aids and services, special instruction and so forth."**

Your school people probably do not realize that Section 504 (1973) came first and that the IDEA (1975) was drafted in part to respond to what Congress had learned in debating and passing Section 504.

Finally, if your child is qualified under the IDEA they automatically meet the eligibility requirements to be covered under Section 504 and the ADA. So tell your school to stop telling you the wrong things and suggest to them that they start learning something about these laws.

**Reed Martin is an attorney with over 35 years experience in special education law and recognized as one of the nation's leading experts.**