

# Chapter 4

## Ethics and Law

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### CHAPTER OBJECTIVES

1. To promote the importance of the ethics codes that guide school psychology practice
2. To gain knowledge, understanding, and appreciation of federal and state laws that govern school psychology practice
3. To learn about an ethical and legal decision-making model
4. To gain knowledge and understanding of the challenges of applying ethics and law in practice

### INTRODUCTION

In the National Association of School Psychologists (NASP) *Model for Comprehensive and Integrated School Psychological Services* (NASP Practice Model), legal, ethical, and professional practice is one of the three domains of competency that form a foundation for training and practice in school psychology and cut across all areas of practice (NASP, 2010a). Ethical and legal practice has remained a foundational competency with each revision of the NASP Practice Model. It has been argued that “[t]wo of the most influential factors that have shaped school psychology over the years have been legal and ethical issues” (Fagan & Wise, 2007, p. 113). School psychologists make decisions in all areas of practice (e.g., assessment, intervention, advocacy) that affect the individuals with whom they work; these decisions often have the potential to significantly affect the lives of children and families. Thus, it is critical that school psychologists be knowledgeable about ethical codes, standards for professional conduct, and laws and statutes that affect practice; engage in legal and ethical practice; and be sensitive to the ethical and legal aspects of their work (Jacob, Decker, & Lugg, 2016).

School psychology is not immune to ethical issues. “[W]hen ethical issues engage the core of our conscience, we become motivated to make the ‘correct’ moral choice and search for reliable

guides to help us do so" (Bersoff & Koepl, 1993, p. 346). Ethical codes guide the school psychology in ethical decision making, define expectations for professional conduct, and delineate standards of practice. Moreover, they allow the field to self-regulate. This is critical for ensuring some semblance of consistency within the field for addressing ethical issues as they arise. Ethical codes also protect the public and individuals who receive school psychology services (Armistead, Williams, & Jacobs, 2011; Bersoff & Koepl, 1993) and develop public trust in school psychology (Armistead et al., 2011). The ethical codes convey the values of the profession and delineate roles and relationships (e.g., between provider and consumer). They also communicate professionalism to the general public and enhance the status of the field. In a manner of speaking, an ethical code serves as a contract with the society in which we function and whose members we serve, and illustrates a professional responsibility and commitment to consumer welfare (Koocher & Keith-Spiegel, 2008).

Just as ethical issues have influenced the evolution of school psychology, so too have constitutions, legal issues, case law, and legislation relevant to education (Dahl, Hoff, Peacock, & Ervin, 2012, also refer to Chapter 2 for more information on the historical context). This evolution is necessary to ensure that school psychology practice remains consistent with the law. The U.S. Constitution delineates rights and equal protection of the laws for all citizens and is a foundation for legal arguments, case law, and subsequent legislation that may result. Schools are obligated to provide services that are consistent with the Constitution, federal statutes and regulations, and case law (i.e., relevant court decisions). This obligation extends to the role of the school psychologist (Dahl et al., 2012). Several significant court cases related to educational issues such as access to education and the overrepresentation of minoritized youth (e.g., African Americans) have contributed to case law and significantly influenced the role of school psychologists. Some cases, and subsequent legislation, have shaped the role of the school psychologist in special education. For example, school psychologists became more involved in eligibility determination, which meant that assessment became a more significant function of the school psychologist's job—effectively contributing to the early view of school psychologists as the "gatekeepers" to special education (Dahl et al., 2012). Other cases and statutes led to the use of multiple methods of assessment for eligibility determination, illuminated the importance of statistically valid and reliable tools consistent with the purpose of the evaluation, and created awareness about the importance of nondiscriminatory assessment.

Both ethics and the law guide professional practice; however, they affect our practice in different ways. The law is a system of enforceable rules developed by legislative organizations that have broad application, whereas ethical codes are developed and created by members of an organization in accordance with the organization's values to guide members' practice. This chapter provides an overview of the role of government in education, including relevant cases, statutes, and legislation that affect school psychology practice; a look at the differences between the law and ethics; and a discussion of the primary ethical codes that govern our practice.

## THE ROLE OF GOVERNMENT IN EDUCATION

Federal laws and regulations have a significant impact on school psychology practice, and to help readers better understand their influence, an overview of federal, state, and local roles in education is presented. In the United States, state laws should be consistent with federal laws, though they might be more stringent. The U.S. Constitution, and the statutes (federal laws) enacted as a result,



are the “supreme law of the land” and take precedence over all other laws. For example, in a case where state law contradicts a federal law, the federal statute would preempt the state law.

## Federal Role in Education

Whereas the right to education is not explicitly stated in the language of the U.S. Constitution, the 10th Amendment, which states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (U.S. Const. amend. X), indirectly delegates power to the states for the right to public education. Specifically, states levy taxes that are used to fund public education. Additionally, a review of state constitutions demonstrates that all include some language regarding a public education system (Parker, 2016). In essence, education has always been determined as a state and local responsibility, because about 90% of funds for education operations come from nonfederal sources (Data First, n.d.).

Though the federal contribution to education funding may seem relatively insignificant, the reality is that public schools depend greatly on this source of revenue. The U.S. Department of Education and other federal agencies work to maximize their support by collecting national data on public schools, evaluating performance, and fostering change (U.S. Department of Education, 2010). The federal government oversees state practices through what is called a spending clause—a “carrot-and-stick” approach—such that federal regulations on education must be upheld by state and local school systems in order to receive federal funding (U.S. Department of Education, 2010). The agency distributes federal funds based on the following: a funding formula, such as money provided to states based on number of children receiving special education services; competition; and financial need determination.

Federal grants, an example of allocation of funds through competition, function in this same spending clause manner. States must abide by regulations and laws that the federal government has established in order to receive grant funding. For example, Race to the Top (RttT) was a competitive grant program signed into law by the Obama administration, which was aimed at incentivizing states to improve education and school systems. This grant, introduced under the American Recovery and Reinvestment Act of 2009 (ARRA), sought to bolster the economy, create jobs, and invest in the education sector (U.S. Department of Education, 2009b). RttT provided over \$4 billion to top participating states that demonstrated significant education reform and positive student outcomes. Specifically, state educational improvements were evaluated based on their adoption of standards and assessments for students in preparation for college, implementation of data collection procedures to monitor student performance, recruitment and development of school staff, and improvement in the lowest performing schools of the state (U.S. Department of Education, 2009b). Another goal of RttT was to encourage states to share with other states their effective models of increasing student achievement and decreasing the achievement gaps across student subgroups.

## State and Local Role in Education

The primary role of state governments with regard to education is to be responsible for and oversee whether public schools are being run in accordance with the federal statutes (National Conference



of State Legislatures, n.d.). The federal government realizes that states have the best knowledge of their education systems, so states have the ability to create their own education departments and to pass state laws governing school practices inasmuch as their laws do not contradict and, at minimum, follow the federal law. Oftentimes, states choose to assign their authority to local school districts with the ability to reclaim this power at any time, with the notion that local entities best understand the population they are serving.

The *Common Core State Standards* is an example of a state-promoted academic standard in math and English language arts aimed at ensuring that students graduate from high school and learn the necessary skills to be successful at a 2- or 4-year college, in their careers, and in general life (Common Core, n.d.-a). In 2018, the Common Core website noted that 41 states, the District of Columbia, four territories, and the Department of Defense Education Activity had adopted the standards in their schools (Common Core, n.d.-b). Along with their roles in overseeing and establishing priorities for their schools, state education agencies (SEAs) also act as a liaison between federal and local entities by clearly communicating resources, mandates, and visions to ensure that their local schools are on the right track (The Aspen Institute, 2015). One such case example of this role is seen in the case of *Corey H. v. Board of Education of City of Chicago* (discussed later in the chapter), though the focus of the case was on the Individuals with Disabilities Education Act (IDEA) requirement of providing education in the least restrictive environment (LRE).

The local school board differs from the state education agency primarily in that the local school board is responsible for carrying out the decisions made in terms of state policies and decisions around education (U.S. Department of Education, 2008). Furthermore, in the local setting, elected school board members are responsible for creating an environment that supports student achievement through community engagement, supporting the development of collaborative partnerships between schools and communities. The local roles include specified school operations, such as implementing state policies, establishing curriculum and educational regulations, and appointing key roles such as the superintendent, among other school staff members (U.S. Department of Education, 2008).

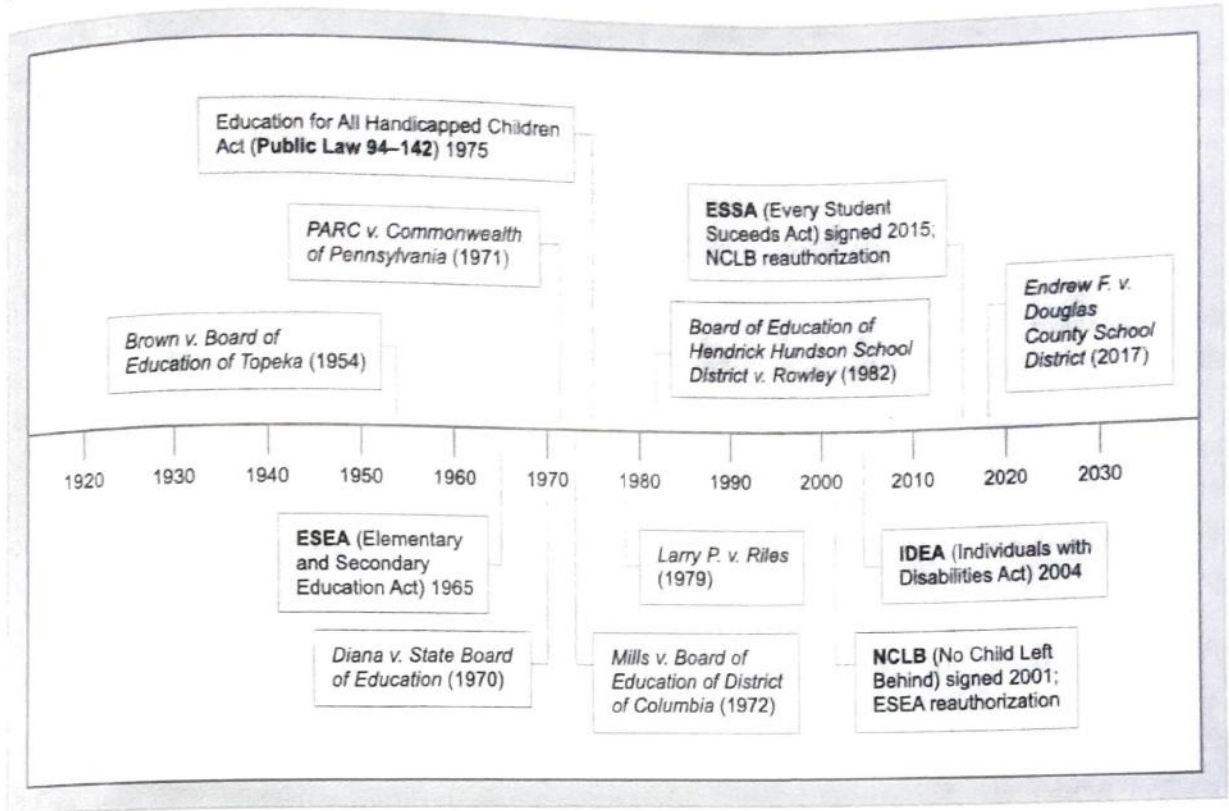
## A TIMELINE OF SPECIAL EDUCATION STATUTES AND EDUCATIONAL LAW

Several cases and subsequent legislation have contributed to special education law and, as a result, have shaped the role of school psychologists in special education. Some of the most influential cases, as well as relevant legislation, are introduced in Figure 4.1.

### Access to Education

Perhaps one of the most noteworthy legal cases in U.S. history, one that certainly pioneered special education law as it stands today, was the case of *Brown v. Board of Education of Topeka* (1954). Because the U.S. Constitution does not guarantee a "right" to education, the 14th Amendment played a significant role in the court's decision of this case. As it stands, the 14th Amendment is one that addresses citizens' rights in terms of being equally protected by the law (U.S. Const. amend. XIV). In response to this landmark decision, which was reached unanimously, lawyers for

FIGURE 4.1. Special Education Relevant Law Timeline



parents from four states (Delaware, Kansas, South Carolina, and Virginia) argued before the Supreme Court in 1955 that the practice of segregated public schools was unconstitutional and unequal. The decision of the Supreme Court (often referred to as *Brown II*) required the district courts (with the exception of Delaware) to carry out school desegregation “with all deliberate speed” (*Brown v. Board of Education*, 1955, p. 301). The judgment in the Delaware case called for immediate admission of the plaintiffs to their schools and remanded the case back to the Delaware Supreme Court. Before this case, the term *separate but equal* was first accepted in a racial segregation case, *Plessy v. Ferguson* (1896), and furthered by the formation of schools only for White children, though no similar schools were created for African American students (Russo, n.d.). In *Brown v. Board of Education*, the courts affirmed the 14th Amendment such that African American students had the right to equal opportunities in education, and the practice of segregated schools was declared unconstitutional (P. Wright, 2010). This decision was historic, marking the end of the “separate but equal” standard that the Supreme Courts had set 60 years earlier.

### Educational Opportunity and Quality

In 1965, President Lyndon B. Johnson signed the Elementary and Secondary Education Act (ESEA) to address the multifaceted issues of poverty in the United States at the time. ESEA was subsequently reauthorized many times. Two revisions with the intentions of improving the deliveries and reach of the original act include the No Child Left Behind Act of 2001 (NCLB) and the Every Student Succeeds Act of 2015 (ESSA). These three documents are briefly presented below, along with links to resources for more in-depth information.



### *Elementary and Secondary Education Act*

ESEA, signed by President Lyndon B. Johnson as part of his "War on Poverty," was the foundation for remedying the inequality of education between students of low-income families and those of higher income families. Specifically, ESEA distributed several federal grants, such as Title I, to financially aid local education agencies (LEAs) with significant populations of low-income children with the goal of helping them achieve state standards (U.S. Department of Education, 2015). It was and remains the primary federal legislation that affects public education that are based primarily on census poverty estimates and the cost of education in each state" (U.S. Department of Education, 2015, para. 1). As a result of its implementation, programs such as Head Start, Follow-Through, bilingual education, and guidance or counseling curricula were created to provide early and consistent opportunities for low-income students (Schugurensky, 2001). A copy of the ESEA and specific sections detailing the conditions of Title I can be found on the U.S. Department of Education website ([www.ed.gov](http://www.ed.gov)). As it stands, ESEA is the largest supplier of federal assistance for primary and secondary education in the United States (NASP, n.d.-a).

### *No Child Left Behind*

The No Child Left Behind Act of 2001 was the reauthorized version of ESEA. It was signed by President George W. Bush in 2001 in an effort to challenge local and state efforts to improve student academic achievement (mainly addressing low-performing students) with the goal of narrowing the nation's achievement gap (National Center for Learning Disabilities, n.d.). The primary theme of NCLB was both school and student accountability (<https://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>). For instance, students in Grades 3–8 were expected to take standardized tests yearly to measure their level of performance against Title I achievement standards, and schools were responsible for publishing detailed report cards including student achievement results and demographics. Teachers also were required to be highly trained and qualified with at least a bachelor's degree (National PTA, 2016). Although NCLB created a national dialogue around the achievement gap and aimed to promote academic success for all children, a number of problematic results, such as state incentives to lower standards, penalties for failure rather than rewards for success, and scrutiny of test scores rather than a focus on growth and progress. Those problems encouraged the reauthorization of the act in the form of ESSA, which was signed by President Barack Obama in 2015 (Social Welfare History Project, 2016).

### *Every Student Succeeds Act*

The reauthorization of ESEA and NCLB, ESSA is currently the most recent modification to our 50-year-old national education law aimed at improving the federal commitment to educational opportunity and equality (U.S. Department of Education, n.d.-b). According to the U.S. Department of Education's website (n.d.-b), some of the noteworthy provisions are as follows: (a) the requirement that all students are provided a high standard of education that will prepare them for the future, (b) transparency on measurable student performance and progress, (c) increased support for evidence-based practice of interventions, and (d) accountability of positive change in the lowest performing schools. According to NASP (n.d.-d), one of the most significant changes that ESSA produced was to return "to states and local jurisdictions substantial control for designing



program and accountability systems and determining use of funds" (para. 1). Particularly for students with disabilities, ESSA gives states the option to test using the state's assessment system or to develop an alternative assessment system that is still aligned with state academic standards and promotes the general curriculum (Pennsylvania State Education Association Education Services Division, 2016).

For school psychologists, ESSA encourages more specialized participation for students. Specifically, ESSA mentions the importance of mental health services and specialized and individualized educational supports in the school setting (NASP, n.d.-e). Whereas NCLB mandated an annual 100% proficiency requirement for students, ESSA presents itself as being more customized to the individual student while still maintaining an ambitious push for student progress. The flexibility that ESSA provides allows school psychologists and schools "to expand access to comprehensive school psychological services within multitiered systems of support (MTSS) ... a foundational, evidence-based framework for effectively integrating multiple systems and services to simultaneously address students' academic achievement, behavior, and social-emotional well-being" (NASP, n.d.-b, para. 1).

### **Access to a Free and Appropriate Public Education for All Students**

Influenced by the impact of court cases during the civil rights movement of the 1950s and 1960s, particularly related to the inequity of funding and expectations and the segregation in schools of African American children, parents of children with disabilities began to question the exclusion and segregation of children with disabilities in public education (P. Wright, 2010). What came about was legislation that requires schools to provide a free and appropriate public education (FAPE) for students with disabilities provided in the least restrictive environment (LRE). School psychologists play an integral role in the process of eligibility determination through consultation, assessment, and intervention. The data gathered by school psychologists help to identify the most appropriate placement and supports for the child.

#### ***Education for All Handicapped Children Act of 1975***

In 1975, Public Law 94-142 was signed by Congress as a measure to ensure that all children with disabilities had a right to free and appropriate public education and to hold public institutions accountable for providing such education. It also required that these children be educated in the least restrictive environment that was appropriate to meet their educational needs, which were to be specified in an Individualized Education Program. Since 1975, Public Law 94-142 was revised to what is now more familiarly recognized as IDEA 2004. Two landmark cases preceding Public Law 94-142 (*PARC v. Commonwealth of Pennsylvania* and *Mills v. Board of Education of District of Columbia*) helped to pioneer the direction toward educational equality and justice as the conclusions of these court cases underlie IDEA 2004 today.

***The Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania.*** In 1971, PARC, a nonprofit organization that advocated for the rights of families and individuals with disabilities, sued the Commonwealth of Pennsylvania for having a state school code that established two conditions: (a) that children who were identified as uneducable may be removed from public school, and (b) that schools could refuse to provide education for



children who had not reached a "mental age of five years" (U.S. District Court, 1971, p. 216). The court decided that these regulations were unconstitutional and forced states to provide evidence of adequate education and training for children with disabilities, thus prohibiting states from denying access to public education for all children ages 6 through 21 years (Li, 2013). This case was a critical turning point for families and children with disabilities. During this time in the United States, many other states had adopted a similar set of policies preventing children with disabilities from receiving access to public education. Now states were prohibited from denying students with disabilities access to public education. This case was significant in both creating and expanding access for youth with disabilities, ensuring that *all* youth were provided a public education.

***Mills v. Board of Education of District of Columbia***. Where *PARC v. Commonwealth of Pennsylvania* (1971) addressed the issue of access to public education for all children with disabilities, *Mills v. Board of Education of District of Columbia* (1972) emphasized that public education was to be free and made accessible to children with disabilities. The families of seven school-age children (who were classified as having behavioral and emotional disabilities) brought a civil action suit against the Board of Education in the District of Columbia for excluding their children from the general education classrooms for significant periods through expulsions and suspensions due to their exhibited disabilities. The board admitted their duty of providing a public education for all residents but rebutted that they lacked the necessary funds to ensure this legal duty. In response, the court determined that regardless of funding issues for necessary programs, the board still had a duty to guarantee that all children were given access to benefit from a public education. The significance of *Mills v. Board of Education of District of Columbia* paved the way for subsequent cases and regulations in the United States that advanced the access to a free and appropriate public education for children with disabilities.

### ***Free and Appropriate Public Education***

IDEA stipulates that all youth receive a free and appropriate education. This means that any special education or related services

(a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. (U.S. Department of Education, n.d.-f)

"FAPE is the foundation of special education and is individually developed for each student with a disability who is eligible for special education services under IDEA through the IEP process" (Yell & Bateman, 2017, pp. 8–9). The IEP identifies the specific needs of the child and is the core element that entitles children with disabilities to FAPE. While FAPE was a critical element of Public Law 94-142, parents and schools did not agree on how exactly FAPE was established. The case of *Board of Education of Hendrick Hudson School District v. Rowley* (1982) questioned what was meant by the requirement of FAPE (Yell & Bateman, 2017). Whereas the outcome of this case provided some procedural guidance, there were still questions as to how an "appropriate education



could be determined (Yell & Bateman, 2017). Specifically, how do you determine if the IEP allows the child to experience educational benefit?

The case of *Board of Education of Hendrick Hudson School District v. Rowley* (1982) was heard by the Supreme Court. The school district provided Amy Rowley, who had a severe hearing impairment, with services and support through an IEP but denied her parents' request to hire a sign language interpreter for her academic classes. Her parents filed suit, and the case eventually went to the federal district court and the U.S. Court of Appeals, which found that despite Amy's academic achievements, her hearing impairment affected her ability to learn as much or perform as well as she would if she did not have the impairment. The court determined that the district complied with the procedural aspects of IDEA; however, they had failed to provide Amy with FAPE, defined by the court as "an opportunity to achieve her full potential commensurate with the opportunity provided to other children" (*Board of Education of Hendrick Hudson School District v. Rowley*, 1982, "Syllabus" para. 1).

More recently, the U.S. Supreme Court addressed FAPE in the case of *Endrew F. v. Douglas County School District* (2017). The court's ruling declared that a higher standard of educational benefit must be received by children with disabilities such that their IEP provides a "meaningful educational benefit" in accordance to FAPE under IDEA (NASP, n.d.-c). Specifically, the court stated that the IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (*Endrew F. v. DCSD*, 2017, p. 11). This emphasizes the need for IEPs that are truly individualized and written specifically for the needs of the child, with the goal of enabling the child to make progress.

### ***Least Restrictive Environment***

In addition to the pertinence of FAPE in IEPs, LRE is another provision of IDEA that schools must follow when creating IEPs for students in special education. The LRE regulation requires that schools educate children with disabilities with nondisabled children "(i) [t]o the maximum extent appropriate...; and (ii) ... [that] removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that educational in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (U.S. Department of Education, n.d.-e, Sec. 300.114(a)(2)(i,ii)). This allows students access to the general education curriculum as well as an opportunity to be educated with their peers in the general education setting and reduces the likelihood of students automatically being solely placed in segregated classes.

*Corey H. v. Board of Education of City of Chicago* (1998) is a noteworthy case that highlights the importance of educating students with disabilities in their LRE, as well as the importance of accountability across state and local authorities of education. The court of *Corey H. Board of Education of City of Chicago* determined that the Illinois State Board of Education failed to monitor and supervise the Chicago Board of Education's inappropriate placement of students with low-incidence disabilities into highly restrictive environments and neglected to educate school staff and administration about IDEA regulations, namely LRE (P. Wright, n.d.). Furthermore, it was revealed that the entire Chicago Public Schools district was assigning students in special education to particular schools and classrooms solely based on their IDEA classification (*Corey H. v. Board of Education of City of Chicago*, 1998; P. Wright, n.d.). Though organizations across the state and



local governments are faced with the responsibility of following federal laws on education, the direct involvement that school psychologists have with children with disabilities makes it crucial for them to have a functional understanding of special education law and, in this particular case, the key themes (FAPE, LRE) of IEPs.

### ***Individualized Education Programs***

The IEP is "a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324" (U.S. Department of Education, n.d.-a, Sec. 1414 (d)(1)(A)(i-ii)). Sections 300.320 through 300.324 of IDEA describe the definition of an individualized education program, the IEP team, parent participation, when IEPs must be in effect, and the development, review, and revision of IEPs. The IEP includes, but is not limited to, (a) the child's present levels of academic achievement and functional performance and how the disability affects involvement and progress in general education or appropriate activities; (b) specific and measurable annual goals; (c) details on how progress towards these goals will be measured; (d) information about specially designed instruction to be implemented and any related services and supplementary aids that are to be provided; (e) an explanation of how much time the child will not participate in general education classes and activities; (f) any other individual accommodations deemed necessary, or reason for and identification of an alternate assessment if warranted; and (g) an estimated start date, frequency, location, and duration of the services and modifications (U.S. Department of Education, n.d.-a, Sec. 1414 (d)(1) (A)(I-VIII)). The child's strengths, parental thoughts on improving their child's education, and the evaluation (initial or most recent) results should be considered in the development of the IEP. The IEP should be reviewed annually.

### ***Individuals With Disabilities Act (IDEA)***

In 1997, IDEA revised Public Law 94-142, and it was reauthorized in 2004 as the Individuals with Disabilities Education Improvement Act (IDEIA). IDEIA was amended in December 2015 through the Every Student Succeeds Act (ESSA). A number of revisions and additions were made to the law in 2004, including changes to manifestation determination and updated timelines for removal from special education, new guidelines for the identification of learning disabilities through testing, and requirements for more robust IEPs, among other amendments (Klotz & Nealis, 2005). IDEA 2004 provides federal funds to states to create access to educational services for youth with disabilities. It guarantees FAPE to all youth, regardless of disability, in the least restrictive environment, ensuring that youth with disabilities have appropriate access to the general education classroom. In a nutshell, the purposes of the IDEA 2004 Reauthorization can be described as (a) a guarantee that children are given a unique and individualized education that meets their specific needs and prepares them for the future, and (b) federal protection of the rights given to children with disabilities and their parents through IDEA's support for a free and appropriate public education (P. Wright, 2010).

***Eligibility categories.*** Special education and related services under IDEA are categorized into 13 eligibility categories as follows: autism, deafness, deaf-blindness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain



injury, and visual impairment (including blindness; Kupper, 2017). Also, SEAs and LEAs can include developmental delay as an eligibility category for children ages 3 through 9. It is important to note that these classifications, or categories, may be related to medical diagnoses but are considered independent and specific to the school setting. For example, a student may be diagnosed as having attention deficit hyperactivity disorder and perhaps take medication for this disorder, but the student may be performing at an appropriate level in school (both academically and behaviorally) that does not necessarily warrant special education and IDEA services.

**Eligibility process.** Specific eligibility for special education under IDEA is determined through a multidisciplinary team (MDT) decision regarding the results of a full initial evaluation that is typically conducted by the school psychologist and other specialists as appropriate, such as a speech pathologist or occupational or physical therapist (U.S. Department of Education, n.d.-a). The MDT, sometimes referred to as the IEP team (though the IEP team is not always the same as the MDT), determines the child's eligibility for special education services. This team includes the parents or guardians, at least one regular education teacher, at least one special education teacher, and a school psychologist or other individual qualified to conduct and interpret assessments of children. Additionally, "other individuals who have knowledge or special expertise regarding the child, including related services personnel," can be included if the parents or guardians or school representatives believe this is important (U.S. Department of Education, n.d.-a, para. (d)(1)(B)(vi)). The evaluation team's report should cover any or all areas of concern for the suspected disability in terms of cognitive, physical, communication, social-emotional, and adaptive development.

## **Section 504 and ADA Amendments Act**

Although IDEA's regulations present as an access statute for children ages 3–21 in the education setting, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) Amendments Act of 2008 are civil rights and equality statutes that apply to any and all individuals with disabilities. Both laws protect individuals with disabilities against discrimination in public programs due to their disability (Disability Rights Education & Defense Fund, n.d.). Eligibility under Section 504 is more encompassing than IDEA. Any student who has "a physical or mental impairment that substantially limits one or more major life activities," which includes learning, is protected under Section 504 (U.S. Department of Education, n.d.-c). Particularly in the school setting, a Section 504 plan refers to a legal document that details a list of accommodations that schools are required to provide for a student.

It should be noted that Section 504 is independent of IDEA and special education, such that a student with a disability may receive services under Section 504 and not be eligible under IDEA, or may be eligible under both Section 504 and IDEA, negating the need for a Section 504 plan. According to the U.S. Department of Education (n.d.-c), if a student is eligible for services under both Section 504 and IDEA, it is not necessary for the student to have both an IEP and a Section 504 plan. The IEP is a written document developed for every child identified with a disability under IDEA. According to the Section 504 regulation, the requirements for FAPE can be met through implementation of the IEP (U.S. Department of Education, n.d.-c). Thus, accommodations that would be listed on a Section 504 plan could be included in the IEP. For instance, a child who exhibits significant academic challenges due to attention deficit hyperactivity disorder qualifies to



receive modifications (e.g., small group instruction, modified assignments) to his or her education through an IEP (under IDEA), as well as accommodations (e.g., extended time on tests) through a Section 504 plan. Because this child qualifies under IDEA, the modifications and accommodations would both be listed in the IEP and the child would not receive a Section 504 plan. There is a wealth of resources for further information on Section 504 as it applies to schools, including the U.S. Department of Education's website under the Office for Civil Rights section (<https://www2.ed.gov/about/offices/list/ocr/index.html>) and the NASP website (<http://www.nasponline.org/research-and-policy/current-law-and-policy-priorities/current-law/section-504-of-the-rehabilitation-act-of-1973>).

## **Disproportionality and Overrepresentation of Minority Students in Special Education**

Statutes and case law offer tools and guidance to address the needs of children suspected of or identified with a disability, and often provides specific guidance to address discriminatory practices and racial or cultural bias. Unfortunately, practices and tools used for special education evaluations are not all without racial or cultural bias. The intent of IDEA and its predecessors has been to provide equity to all children with disabilities. Standards within IDEA and case law attempt to reduce discrimination and bias, particularly in relation to evaluation and eligibility determination. For example, IDEA standards state that evaluators must consider the potential for racial or cultural bias in assessments and other evaluation tools, engage in nondiscriminatory assessment practices, and use multiple methods of data collection to make eligibility decisions (U.S. Department of Education, n.d.-a). It is important to consider how racial and cultural factors might influence the IDEA process (e.g., evaluation, test selection, eligibility determination).

The issue of minority overrepresentation in special education has been under investigation by Congress since 1975, when it found that African American children were significantly overrepresented. In reauthorizing IDEA in 2004, Congress sought to set new rulings that would require states to address any disproportionality and overrepresentation of minorities in special education (U.S. Department of Education, n.d.-g). According to the regulations, states must establish policies and monitor LEAs to prevent overidentification for special education by race and ethnicity, and must collect data and examine it for evidence of significant disproportionality by race or ethnicity (U.S. Department of Education, 2007).

### ***Diana v. State Board of Education***

In the 1970s a number of major court cases pertinent to special education law considered their influence on the cognitive and achievement testing of culturally diverse students. In 1970, nine Mexican American students filed a lawsuit against the Board of Education in Monterey County, California, because they had been placed in special education classes based on the results of their test scores (McLean, 1995). All of the children in the case came from Spanish-speaking homes where English was not their primary language. The students' IQ scores averaged in the low 60s, but when retested with bilingual consideration, an average of 15 IQ points were gained (Weintraub, 1971). In a county where the Hispanic student population was around 18% of the total student body, the data indicated that around 33% of students in special education classrooms were