

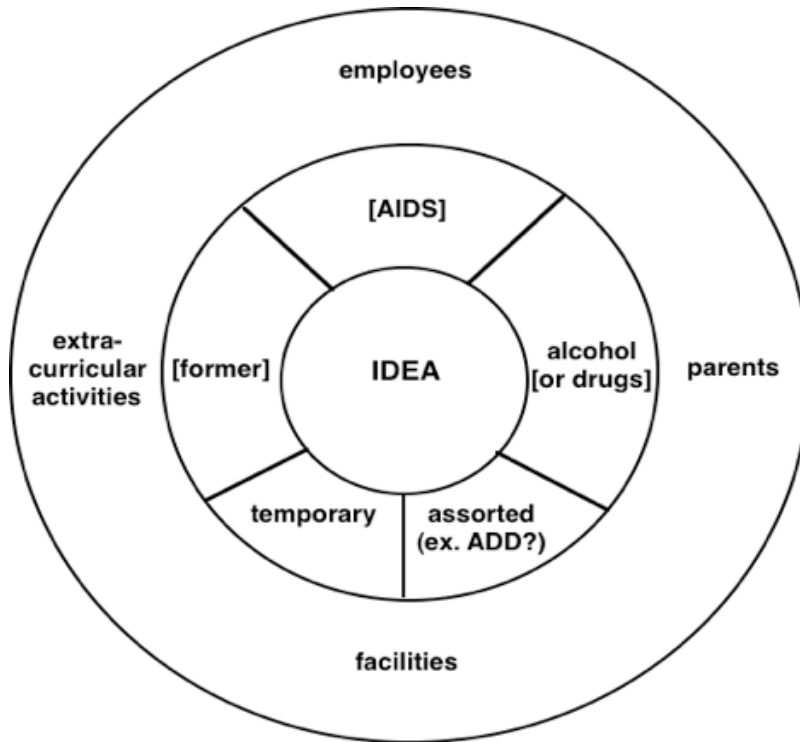
# Building Blocks of Special Education Law: **Oklahoma**

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The abbreviations and acronyms (with OK-specific acronyms highlighted) include:

BIP	=	behavior intervention plan
CIC	=	clean intermittent catheterization
ED	=	emotional disturbance
ESY	=	extended school year
FAPE	=	free appropriate public education
FBA	=	functional behavioral assessment
ID	=	intellectual disability
IEE	=	independent educational evaluation
IEP	=	individualized education program
IHO	=	impartial hearing officer
LRE	=	least restrictive environment
M-D	=	manifestation determination
<b>MEEGS</b>	=	eligibility determination form
MDT	=	multi-disciplinary team
<b>OSDE</b>	=	Oklahoma State Department of Education
<i>pro se</i>	=	proceeding w/o attorney representation
<b>RED</b>	=	review of existing data
RTI	=	response to intervention
RR	=	reevaluation report
SEA	=	state education agency
SLD	=	specific learning disability



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<b>OKLA. STAT. title 70, ch. 1 (leg.)</b>	
<b>OKLA. ADMIN. CODE §§ 210:15-x-x (regs)</b>	
<b>IDEA</b>	<b>Sec. 504/ADA</b>

Circles:

Birds' eye view (from above): the fraternal twins of Sec. 504 and the ADA have broader coverage that includes but is not limited to that of the IDEA.

Blocks:

Lateral view: the "cooperative federalism"<sup>1</sup> allows state law to exceed, but preempts them from being lower than, the national minimum requirements of the IDEA and Sec. 504/ADA.

<sup>1</sup> See, e.g., *Evans v. Evans*, 818 F. Supp. 1215, 1223 (N.D. Ind. 1993).

## 1.0 Federal legislation and regulations

### 1.1 Individuals with Disabilities Education Act (“IDEA”)<sup>2</sup>

- 2004 legislation + 2006 regulations + 2008 amended regulations
- child find: collective + individual
- eligibility (2-pronged definition of disability)
  - initial evaluation, reevaluation, and IEE
- IEP: FAPE + related services + LRE
  - assistive technology services and devices
  - ESY
  - transition services
- IHO → judicial appeal
  - one or two tiers → concurrent jurisdiction
  - exhaustion doctrine
  - resolution session
  - “stay-put” (or status quo) provision
  - remedies: tuition reimbursement and compensatory education
  - attorneys’ fees + nonexclusivity
- discipline: M-D and FBA/BIP

### 1.2 Section 504 of the Rehabilitation Act (“Sec. 504”)

- disability: 1) a mental or physical impairment that limits 2) a major life activity 3) substantially
- FAPE: special or regular education and related services that provide commensurate opportunity

### 1.3 Americans with Disabilities Act (“ADA”)

### 1.4 ADA Amendments Act (“ADAAA”)

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<sup>2</sup> Formerly called EHA, EAHCA, and P.L. 94-142.

## 2.0 State statutes and regulations - Oklahoma

### 2.1 Oklahoma School Code and Oklahoma Administrative Code<sup>3</sup>

#### 2.11 Limited additions to IDEA, including:

- “scholarships” for students with disabilities (§ 13-101.1 *et seq.*; § 210:15-13-7)
- authorization for special education coops (§ 13-101)
- accommodations, per IEP or Section 504 plan, for OTSP (§ 210:10-13-11)
- limits for size of self-contained special education (§ 18-113.1)
- qualifications (e.g., law degree or M.Ed.) and OSDE responsibility for appointment and compensation for hearing/appeal officers (§ 210:15-13-5)
- requirements for educational interpreter for the deaf (§ 210:15-13-4)
- district obligation to provide IEP or 504 Plan provisions for online courses deemed appropriate for the student (§210:15-34-16)

#### 2.12 Sketchy, separate requirements for gifted students

- requirements for identification and programs for “gifted and talented” students (§ 1210.307, §§ 1261–1268; § 210:15-23-1 and § 210:15-23-2)

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<sup>3</sup> For the various legal sources, see <http://sde.ok.gov/sde/education-law-book>. For a manual with related guidelines, see OSDE’s (2014) SPECIAL EDUCATION HANDBOOK ([http://sde.ok.gov/sde/sites/ok.gov.sde/files/documents/files/Oklahoma%20Special%20Education%20Handbook\\_0.pdf](http://sde.ok.gov/sde/sites/ok.gov.sde/files/documents/files/Oklahoma%20Special%20Education%20Handbook_0.pdf))

### 3.0 Supreme Court case law<sup>4</sup>

- 3.1 *Davis* (1979) - “otherwise qualified” (Sec. 504)
- 3.2 *Rowley* (1982) - FAPE (“appropriate” education)
- 3.3 *Tatro* (1984) - related services (CIC)
- 3.4 *Burlington* (1985) - tuition reimbursement (3-step test)
- 3.5 *Arline* (1987) - “handicapped” (Sec. 504)
- 3.6 *Honig* (1988) - dangerousness exception to “stay-put”
- 3.7 *Zobrest* (1993) - parochial schools<sup>5</sup>
- 3.8 *Florence County v. Carter* (1993) - tuition reimbursement (second step)
- 3.9 *Garret F.* (1999) - related v. medical services
- 3.10 *Sutton* (1999) and *Toyota* (2002) – “disability” under Sec. 504 and ADA<sup>6</sup>
- 3.11 *Schaffer* (2005) – burden of proof
- 3.12 *Arlington Central* (2006) – expert witness fees
- 3.13 *Winkelman* (2007) – parents right to proceed *pro se* in federal court
- 3.14 *Forest Grove* (2009) – tuition reimbursement when no prior sp. ed. enrollment
- 3.15 *Fry* (2017) – “exhaustion” of overlapping non-IDEA claims
- 3.16 *Endrew F.* (2017) – refinement of *Rowley* substantive standard of FAPE

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<sup>4</sup> Other pertinent Supreme Court cases, which were legislatively reversed, were *Smith v. Robinson* (1984) (attorneys’ fees and exclusivity) and *Dellmuth v. Muth* (1989) (11th Amendment immunity). This list also does not include the recent 4x4 ruling in *Tom F.* (2007) because it did not establish a national precedent, and *Forest Grove* (2009) resolved its issue. See attached article for summary of the major decisions prior to the last two.

<sup>5</sup> See also *Kiryas Joel* (1994) (special religion-based district violates Establishment Clause).

<sup>6</sup> Reversed by the ADAAA.

4.0 Legal forums for complaints or cases

4.1 school district's Sec. 504/ADA coordinator and grievance procedure

4.2 OSDE's complaint procedures - tel. 405-521-3351

<http://sde.ok.gov/sde/sites/ok.gov.sde/files/IDEA%20State%20Complaint%20Form.pdf>

4.3 impartial hearings – Special Education Resolution Center (tel. 888-267-0028)

[https://www.ok.gov/abletech/Special\\_Education\\_Resolution\\_Center/](https://www.ok.gov/abletech/Special_Education_Resolution_Center/)

4.4 U.S. Dep't of Ed's Office for Civil Rights ("OCR") - tel. 816-268-0550

email: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)