

How IDEA, §504 and the ADA Differ: Key Citations

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Differences Between IDEA, §504 & ADA

Compliance with the IDEA does not doom all §504/ADA claims. There are material differences between §504 and Title II of the ADA.

ADA requirements regarding deaf or hard-of-hearing students are different than those imposed by the IDEA.

- *K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9th Cir. August 6, 2013)

IDEA does not require “a potential-maximizing education.”

- *Board of Education of Hendrick Hudson School District, Westchester County v. Rowley*, 458 U.S. 176, 197 n.21. (1982)

FAPE under the IDEA and FAPE as defined in the §504 regulations are similar but not identical.

Unlike FAPE under IDEA, FAPE under §504 is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met.

- *Mark H. v. Lemahieu*, 513 F.3d 922 (9th Cir. 2008)

ADA access should not be uncomfortable or difficult (“After all, a paraplegic can enter a courthouse by dragging himself up the front steps.”)

- *Baughman v. Walt Disney World Co.*, 685 F.3d 1131 (9th Cir. 2012)

A. Damages Not Available Under IDEA

No private right in IDEA action for nominal damages.

- *Oman v. Portland Public Schools*, 679 F.3d 1162 (9th Cir. 2012)(In charter school context court extended judicial deference to educational institutions academic decisions in ADA and §504 claims.)

Monetary damages are not available under IDEA.

- *Witte v. Clark County School District*, 1197 F.3d 1271, 1275 (9th Cir. 1999); *Blanchard v. Morton Sch. Dist.*, 509 F.3d 935, 938 (9th Cir. 2007)

B. Damages May Be Available Under §504 & the ADA

Damages require intent or deliberate indifference. Deliberate indifference is:

1. Knowledge that a harm to a federally protected right is substantially likely; and
2. Failure to act on that likelihood.

Failure to act can include failure to investigate whether requested services were a reasonable accommodation.

Reasonable accommodation under §504 includes duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.

- *Mark H. v. Hamamoto*, 620 F.3d 1090 (9th Cir. 2010)

C. Unruh Act Damages

A violation of the ADA is a, per se, violation of the Unruh Act.

- Civil Code §51(f); *Lentini v. Calif. Ctr. for the Arts*, 370 F.3d 837, 847 (9th Cir. 2004)

Intentional discrimination is not necessary to establish an entitlement to damages under the Unruh Act.

- *Munson v. Del Taco, Inc.* (2009) 46 Cal. 4th 661.

The Unruh Act provides for actual and statutory damages of no less than \$4,000 for each violation and recovery of attorney's fees.

- Civil Code Section 52(a).

Need to file Government Tort Claim to recover Unruh Act damages.

- Gov't Code §910 *et. seq.*

Government Tort Claim may not be necessary when damages are just ancillary to declaratory or injunctive relief

- *Gatto v. County of Sonoma*, 98 Cal. App. 4th 744 (2002)

Exhaustion of Administrative Remedies

Exhaustion of administrative remedies is necessary when seeking relief under ADA or §504 that is also available under IDEA.

- *Payne v. Peninsula School District*, 653 F.3d 863 (9th Cir. 2011)(en banc)(cert. denied); *Kutasi v. Las Virgenes Unified Sch. Dist.*, 494 F.3d 1162 (9th Cir. 2007)

Collateral Estoppel

Issue and claim preclusion may be applied to short circuit redundant §504 and ADA claims.

- *Pace v. Bogalusa City School Board*, 403 F.3d 272, 290-297 (5th Cir. 2005)(en banc); *Indep. Sch. Dist. No. 283 v. S.D.*, 88 F.3d 556,562 (8th Cir 1996)