

Understanding the Differences Between Special Education And Section 504

An Overview of IDEA and Section 504

Since 1975, every child with a disability has been entitled to a free and appropriate public education (FAPE) designed to meet his individual needs under the rules and regulations of the Individuals with Disabilities Education Act (IDEA) commonly known as "Special Education." This federal law governs all special education services and provides some funding to state and local education agencies to guarantee special education and related services for those students who meet the criteria for eligibility in a number of distinct categories of disability, each of which has its own criteria. According to the U.S. Department of Education, approximately 5.5 million children with disabilities receive special education and related services and are protected by IDEA. However, some kids with special needs do not receive services under IDEA, but are served under Section 504 of the Rehabilitation Act of 1973. Section 504, a civil rights law, prohibits discrimination on the basis of disabling conditions by programs and activities receiving or benefiting from federal financial assistance. This statute does not require the federal government to provide additional funding for students identified with special needs. Schools must provide these children with reasonable accommodations comparable to those provided to their peers under the rulings of Section 504. Although not a financing statute, Section 504 does provide for enforcement of the mandate: A school that is found by the Office of Civil Rights to be out of compliance with Section 504 may lose its federal financing. For some children, providing the appropriate modifications and accommodations they need is the only way they will be successful in their school experiences. A thorough understanding of the provisions of these two laws and how they differ can help you and your child's teachers plan the most appropriate education for your child.

An Overview of the Differences

The major differences between IDEA and Section 504 are in the flexibility of the procedures. For a child to be identified as eligible for services under Section 504, there are less specific procedural criteria that govern the requirements of the school personnel. Schools may offer a student less assistance and monitoring with Section 504 because there are fewer regulations by the federal government to instruct them, especially in terms of compliance.

In contrast, a child identified for services under IDEA must meet specific criteria. The degree of regulation is more specific in terms of time frames, parental participation, and formal paperwork requirements. IDEA also addresses the special education of students with disabilities from preschool to graduation only (from ages 3 to 21). Section 504 covers the lifespan and safeguards the rights of persons with disabilities in many areas of their lives, including employment, public access to buildings, transportation, and education.

The criteria for identification, eligibility, appropriate education, and due process procedures under IDEA and Section 504 vary. It is important for you and your child's teachers to understand how these laws differ, and how those differences could affect your child's education.

Identification and Eligibility

In order for children with disabilities to receive services, they must be identified and then determined to be eligible for these services. Under IDEA guidelines, school districts are required to identify and evaluate all children suspected of having a disability whose families reside within the district. Section 504 does not have this requirement.

IDEA

- Covers all school-aged children who fall within one or more specific categories of qualifying conditions (i.e., autism, specific learning disabilities, speech or language impairments, emotional disturbance, traumatic brain injury, visual impairment, hearing impairment, and other health impairments).
- Requires that a child's disability adversely affects her educational performance.

Section 504

- Covers individuals who meet the definition of qualified "handicapped" person - for example, a child who has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as handicapped by others. (Major life activities include: walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.)
- Does not require that a child need special education to qualify. **Note:** Students who are ineligible for services or are no longer entitled to services under IDEA (e.g., kids with LD who no longer meet IDEA eligibility criteria) may be entitled to accommodations under Section 504.

Evaluation

A child with a disability is assessed to determine what services, if any, are needed.

IDEA

- Requires that the child be fully and comprehensively evaluated by a multidisciplinary team.
- Requires informed and written parental consent.
- Requires a reevaluation of the child at least once every three years, or if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.
- Provides for independent evaluation at the district's expense if parents disagree with first evaluation.
- Does not require reevaluation before a significant change in placement.

Section 504

- Evaluation draws on information from a variety of sources and is documented.
- Decisions about the child, evaluation data, and placement options are made by knowledgeable individuals. Such decisions do not require written consent of the parents, only that the parents are notified.
- Requires "periodic" reevaluation.
- No provisions made for independent evaluation at school's expense.
- Requires reevaluation before a significant change in placement.

Responsibility to Provide FAPE

FAPE is an acronym for a Free and Appropriate Education.

IDEA

- Requires an individualized education program (IEP).
- "Appropriate" education means a program designed to provide "educational benefit" for a person with disabilities.
- Placement may be any combination of special education and general education classrooms.
- Provides related services, if required. Related services may include speech and language therapy, occupational therapy, physical therapy, counseling services, psychological services, social services, and transportation.

Section 504

- Does not require an IEP, but does require a plan.
- "Appropriate" means an education comparable to the education provided to those students who are not disabled.
- Placement is usually in a general education classroom. Children can receive specialized instruction, related services, or accommodations within the general education classroom.
- Provides related services, if needed.

Due Process Procedures

Sometimes parents and school districts disagree about how a child with disabilities should be educated. When this happens, there are procedures in place to handle these disagreements.

IDEA

- Must provide impartial hearings for parents who disagree with the identification, evaluation, or placement of the student.
- Requires written consent.
- Describes specific procedures.
- An impartial appointee selects a hearing officer.
- Provides "stay-put" provision (the student's current IEP and placement continues to be implemented) until all proceedings are resolved.
- Parents must receive ten days' notice prior to any change in placement.
- Enforced by U.S. Department of Education, Office of Special Education.

Section 504

- Must provide impartial hearings for parents who disagree with the identification, evaluation, or placement of the student.
- Does not require parental consent.
- Requires that parents have an opportunity to participate and be represented by legal counsel -- other details are left to the discretion of the school.
- A hearing officer is usually appointed by the school.
- No "stay-put" provisions.
- Does not require that parents are notified prior to the student's change of placement, but they still must be notified.
- Enforced by U.S. Department of Education, Office of Civil Rights.

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