



## Special education series

### Know Your Rights:

## Individualized Education Programs (IEPs) and 504 Plans: What's the difference?



*"My child has a 504 plan. The school said he wasn't eligible for an IEP because he's passing his courses."*

*"My child has ADHD and is doing poorly in school, but the school says the classroom modifications he gets under his 504 plan are all they are required to do."*

*"The school says they need to try a 504 plan before they can consider an IEP."*

*"My child just needs speech therapy but not special education. Does she qualify for special education?"*

The Disabilities Rights Center often hears such concerns from parents who are confused about the difference between 504 plans and IEPs, and are not sure what their child needs. Schools often tell parents that students with ADHD, mild learning disabilities, or emotional problems are eligible for a 504 plan but not an IEP. However, this is not necessarily the case.

So, what's the difference? Is one better or more appropriate for your child? In order to make that decision you need to know about the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

### **The Individuals with Disabilities Education Act (IDEA)**

The IDEA requires schools to provide all *educationally disabled* students ages 3-21 with a free, appropriate public education (FAPE). To be eligible for special education under the IDEA, a child must have a disability and must need special education and related services. The school must provide an individualized education program that is designed to meet the child's unique needs and **prepare him or her for further education, employment and independent living.**

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### Section 504 of the Rehabilitation Act

If a child has a disability but does not need special education services, the child is not eligible under IDEA but may be eligible for a Section 504 plan. A “504 plan” is a plan developed in accordance with Section 504 of the Rehabilitation Act, a civil rights law (not an education law) that protects people with disabilities from discrimination in programs and activities, such as public schools, that receive federal funding. Under 504, “No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity...” It is not necessary for a child’s disability to be *educationally* handicapping in order to qualify for the protections under Section 504.



Under 504, the person must be “otherwise qualified” for the program or activity. For example, the school would not be required to include a child on the varsity team if the student didn’t meet the requirements due to skill level or age. However, the school would be required, for example, to include a student in the debating club if the club was open to all students but was located in an inaccessible part of the building and the child used a wheelchair (the school could move the location).

### Parents are Covered too!

Parents are also covered under Section 504 (and the Americans with Disabilities Act) if they have a disability as defined in Section 504 and need accommodations for equal access to the school activities parents engage in. For instance, at meetings, – both those that are just about one child and those that are open to all parents – schools must provide interpreters for Deaf parents and must make written material available in alternate format for parents with vision impairments if they request it. Meetings and school functions must be physically accessible to a parent with a mobility impairment.

Section 504 protects you and your child with a disability in other settings where the program or service receives federal funding (college, day care, recreational programs, etc.).

All students eligible under the IDEA are also protected by Section 504, but the reverse is not true.

**Section 504 Plan:  
accommodations,  
modifications,  
support services to  
ensure equal access  
to education**

A child with diabetes or other medical condition who needs frequent medical monitoring to participate in school, but who does not otherwise need any modifications to her educational program, would be eligible for a 504 plan but not an IEP.

### **What are some differences in procedures and protections?**

Both the IDEA and Section 504 require procedures to protect the rights of the child and parent. However, the protections offered to parents by the IDEA are more specific. The IDEA is more explicit about requirements for evaluations, education plans, parental participation, timelines and criteria for periodic reviews and



reevaluations, and procedural safeguards.

For example, the IDEA has detailed due process requirements. 504 leaves many of the details to the school district, though parents can complain to the Office for Civil Rights about discrimination under 504.

IDEA requires written notice before meetings, evaluations, and changes in IEP or placement. 504 just requires that the notice be adequate, though in practice adequate notice is probably written notice. Under IDEA, the school must have a meeting before changing a child's placement. Under a 504 plan, the school must give notice to the parent and an opportunity to be heard on the proposed changes.

### **Discipline**

For any child with a qualifying disability, there are procedural protections for conduct related to the disability. With both IDEA and 504, a child whose behavior is a manifestation of his or her disability cannot be disciplined by a change in placement (such as an expulsion or suspension for more than 10 days).

For behavior that is not related to the disability, children who have a 504 plan and are suspended or expelled are not necessarily entitled to continued education, whereas under the IDEA a child remains eligible for special education, even after disciplinary procedures.

**IEP: an individualized education program, including special education and related services, that is designed to meet the child's unique needs**



### Which plan is right for my child?

Under either plan, a child can receive classroom modifications, accommodations, and a free, appropriate public education and related services.

However, if your child is having difficulty learning and needs specialized instruction, an IEP is probably required. If your child's difficulties have little or nothing to do with learning (medical condition, walking impairment, severe allergy, etc.), and your child does NOT need specialized instruction but DOES need accommodations or modifications to programs, facilities, or testing, then a 504 plan may be appropriate.

Many schools will steer parents towards a 504 plan over an IEP: it is less burdensome for schools. A 504 plan also offers fewer rights and protections for parents and students struggling with a school district for an appropriate education.

For more detailed information about your rights, go to [www.drcnh.org](http://www.drcnh.org) , or call DRC at 1-800-834-1721.

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