

# **Section 504, the Americans with Disabilities Act (ADA)**

**VS.**

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

## **What is the Difference?**

*by Susan Conners, M. Ed.*

TSA frequently receives questions regarding the difference between a Section 504 Plan and an IEP (Individualized Education Program). More and more schools are denying parental requests for the classification of children with TS under the Individuals with Disabilities Education Act (IDEA) under which the child would be eligible for an IEP (Individualized Education Program.) They are opting instead to provide a Section 504 Accommodation Plan under the Americans with Disabilities Act (ADA).

Parents are often confused about the difference between the two options, which one is more appropriate and offers more protection for their child. They also have concerns about which will provide their child with the optimum learning environment based on their level of disability.

In this article, you will learn about **Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA)**, as contrasted with the **Individuals with Disabilities Education Act (IDEA)**.

## **Section 504 and ADA**

Section 504 is a federal civil rights law. The purpose of Section 504 is to protect persons with disabilities against discrimination for reasons related to their disabilities.

Unlike IDEA, Section 504 does not guarantee that a child with a disability will receive an individualized educational program that is designed to meet the child's individual educational needs.

## **Eligibility**

Just because a child has a disability or impairment does not mean that he/she automatically qualifies for special education services under the IDEA. **A child with a disability who does not need special education services will not qualify for special education and related services under the IDEA. He or she may however receive protections under Section 504 of the Rehabilitation Act.**

Eligibility for protections under Section 504 depends on the child in question having a physical or mental impairment which must substantially limit at least one major life activity. Major life activities include walking, seeing, hearing, speaking, breathing, learning, reading, writing, performing math calculations, working, caring for oneself, and performing manual tasks. As you see, many activities are included under this category. The question that must be addressed by the school's special education team is whether the child has an "impairment" that "substantially limits one or more major life activities."

Section 504 requires an evaluation that draws information from a variety of sources. Section 504 does not

require a meeting before a change in placement.

## Rights Dilemma

Some parents have the belief that if a child is classified under IDEA, the child must automatically be placed in a special education class. They also believe that if the child has a 504 plan, the child may remain in the regular classroom. These same parents therefore often assume that a 504 Plan is more desirable which is not accurate. **"Special education" under IDEA does not mean placement. It means the child has been identified as having unique educational needs related to his/her disability and is entitled to an Individualized Education Program (IEP) to meet these needs.**

A child who receives Section 504 protections has fewer rights than the child who receives special education services under the IDEA. **The child who receives special education services under the IDEA is automatically protected under Section 504.**

Section 504 is designed to guarantee that children with disabilities will not be discriminated against. It is also important to understand that if your child does not qualify for special education services under IDEA, your child does not have the procedural protections that are available under the IDEA.

## Section 504 Accommodation Plan

Under Section 504, the child with a disability may receive accommodations and modifications that are not available to children who are not disabled. These accommodations and modifications are also available under IDEA. For children with TS and associated disorders, the following accommodations could include, but not be limited to, such things as:

Tests taken in a separate location with time limits waived or extended.

The education of other students who come into contact with the child with TS.

Giving the child frequent breaks out of the classroom to release tics in a less embarrassing environment.

The use of a word processor due to fine motor, visual motor deficits.

Tests/reports given orally.

Shortened assignments.

Standardized tests answers written directly in the test booklet and transferred onto answer sheet by teacher or assistant.

Class notes provided rather than having the student copy from the chalkboard or overhead.

Allowing the child to leave the classroom 2 to 3 minutes early to avoid crowded hallways.

Preferential seating in the classroom.

Provision of a daily assignment sheet to be filled out by the student and verified by the teacher for accuracy. The parent could then check to make sure that all the work is accomplished. This would assist with homework prioritizing and management.

Visit our [online store](#) to purchase brochure *Specific Strategies and Techniques for Students with TS* for many more examples of modifications and accommodations.

## Access v. Educational Benefit

Let's suppose that your special needs child is severely visually impaired. Under Section 504, your child cannot be discriminated against because of the disability. Your child must be provided with access to an education, to and through the schoolhouse door. Modifications may need to be made to the building itself and other accommodations may need to be made for your child. Preferential seating, enlarged print texts, workbooks, tests, etc. would be reasonable accommodations.

Section 504 defines a free appropriate public education as "the provision of regular or special education and related aids and services that . . . are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and . . . are based upon adherence to specified procedures."

Now let's suppose that your visually impaired child also has Tourette Syndrome, ADHD and a Non Verbal Learning Disability that adversely affects the child's ability to learn. Under the IDEA, if your child has a disability that adversely affects educational performance, your child is entitled to an education that is designed to meet the child's unique needs and from which your child receives educational benefit. Section 504 does not guarantee that your visually impaired child will receive an education from which your child receives educational benefit. Your Section 504 child has access to the same free appropriate public education that is available to children who are not disabled.

## Issues of Discipline

If your child simply has a 504 Plan and this child misbehaves in school, the school may decide that the child's behavior is not related to the disability and the child can be expelled from school permanently. Under IDEA the child has the right to a fair and appropriate education, even if expelled from school. **Section 504 and ADA do not provide these protections.** This can be particularly problematic for children with TS and associated disorders.

## Procedural Protections

Section 504 does not include a clearly established "Prior Written Notice" requirement. In contrast, IDEA includes an elaborate system of procedural safeguards designed to protect the child and parents. These safeguards include written notice before any change of placement and the right to an independent educational evaluation at public expense. **Section 504 does not include these protections.**

## The Right to Due Process and an Impartial Hearing

Both Section 504 and IDEA require school districts to conduct impartial hearings for parents who disagree with the school's special education team in regards to identification, evaluation, or placement of their child.

Under Section 504, the parent has an opportunity to participate and obtain legal counsel, but other details are left to the discretion of the school district.

## A Word to the Wise

To be eligible for special education services, it is necessary to prove that the child in question has a disability that interferes with his education and performance. The first stumbling block for many parents is exactly that, proving to the school that the child's Tourette Syndrome is having an impact on his educational performance. The main reason for this first stumbling block is the lack of knowledge on the part of school personnel about the nature of TS and its associated disorders.

Before a child qualifies for special education services under IDEA, it is required that he/she be evaluated. Most of us have the erroneous idea that this evaluation is simply a series of standardized tests administered by either the school psychologist and/or a special education teacher. We also assume that the results of these tests are the sole determining factor in qualifying a child for services. This view is inaccurate. According to IDEA, an evaluation must consist of all of the following:

- **Special medical concerns addressed by the treating physician**
- **Interviews with parents and school staff**
- **Information from parents**
- **Specific tests which must include all areas related to the suspected disability**

If the child has been tested and the school has informed you that he/she does not qualify for special education services based solely on the results of testing, this is not acceptable. Many children with TS do not qualify on the results of psycho educational testing alone. They may indeed have a learning disability, but in an area that may not have been assessed. And more importantly their disability will very likely be based on the impact of the symptomatology of TS, ADHD, OCD and any other associated neurological disorders on classroom performance. **These are the questions that you need to ask and evaluations that you need to request:**

Has the school's Committee on Special Education consulted with the treating physician to determine the nature of this child's symptoms?

- **Has the committee interviewed the parents as to specific symptoms and problem areas that they are seeing at home?**
- **Has the committee looked at a portfolio of the child's work?**
- **Has the child been administered tests in the following areas?**
  1. **Fine Motor/Visual Motor Impairment (Usually administered by an Occupational Therapist)**
  2. **Central Auditory Processing**

- 3. Language Processing**
  - 4. Memory Skills**
  - 5. Executive Function**
  - 6. Sensory Integration/Sensory Defensiveness**
- **Whether or not the child is having behavior problems at school, has a Functional Behavior Assessment been done?**

These are all common areas of learning disabilities associated with children with TS. They are often overlooked when the child is tested. **If the school tells you that they do not routinely test for these disabilities and/or do not have access to these specific tests, then you have the right to have your child tested outside the school system preferably by a neuropsychologist and to have this evaluation paid for by the school.** I reiterate that the reason that the school system does not routinely test for these disabilities is lack of information. They are probably unaware that these are areas that must always be looked at when evaluating with children with TS.

Will they take your word for this?? Possibly, but not typically. This is where you turn to your child's treating physician who can actually write a "prescription" for these tests and state why. This is where you also turn to the Tourette Syndrome Association to obtain literature verifying the co-occurrence of associated conditions in children with TS.

**Tourette Syndrome is a medical condition and therefore qualifies under the classification of Other Health Impaired (OHI). A learning disability does not have to be present for classification. Certainly all suggested tests should be administered to test for a learning disability. A very important fact to remember is that the school cannot refuse to classify a child for special education services because he or she is not "Learning Disabled".**

## Summary

In this article, you learned that Section 504 of the Rehabilitation Act and the Americans with Disabilities Act are responsible for accommodations and modifications in testing situations and programs, and improved building accessibility. You learned that these statutes do not require public schools to provide an educational program that is individualized to meet the unique needs of a child with the goal of enabling the child to become independent and self- sufficient. You learned that the child with a Section 504 plan does not have the protections available to the child who has an IEP under the IDEA.

It's also very important to note that the decision is made by the school's special education committee of which the child's parents and their advocates are equal members whether the child will receive services under IDEA and thus an IEP. It is also important to reiterate that children with TS receiving services under IDEA should always be classified under the category of **Other Health Impaired (OHI)**.

[Return to the TSA Home Page](#)

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