

Understanding Special Education Plans – The Differences Between An IEP Plan And Section 504

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An Individualized Education Program (IEP) derives from a governmental program (the [Individuals with Disabilities Education Act](#) – “IDEA”) and does not apply to every student with a disability. An IEP only applies to disabled students who apply to the program and are eligible. Section 504 is an anti-discrimination law and applies to every student with a disability; a student does not need to apply to obtain benefits under Section 504.

IDEA provides federal funds to assist participating states in educating disabled children. New Jersey is a participating state. In order to qualify for this financial assistance, New Jersey must put procedures in place to ensure that all disabled children residing in the state have available to them “free and appropriate public education” (FAPE) consisting of special education and related services provided in conformity with an IEP. The responsibility to provide FAPE falls upon each local public school district. An IEP sets forth personalized individualized instruction specifically designed to meet the unique needs of a disabled child with sufficient support services to permit that child to benefit educationally from that instruction. Each IEP must be reasonably calculated to enable a child to make progress appropriate in light of that child’s circumstances.

Qualifying for an IEP – Eligibility Requirements

To qualify for an IEP, a child must apply and be eligible. To be eligible, the child must be disabled, the disability must impact the child’s ability to learn skills or improve skills and the child must need services. A student must fall into one of the 13 categories that define a disability under IDEA to be eligible. These categories are: specific learning disability, other health impairment, autism, emotional disturbance, speech or language impairment, visual impairment, deafness, deaf-blindness, orthopedic impairment, intellectual disability, traumatic brain injury and multiple disabilities. School districts need parental consent for an IEP or they must apply for a due process hearing to obtain consent.

Section 504 Eligibility

Section 504 is an anti-discrimination law. It derives from [The Rehabilitation Act of 1973](#). Section 504 was incorporated in 2009 by the [Americans with Disability Act](#). This law prohibits discrimination against disabled individuals. It pre-dates the IDEA and provides broader coverage than IDEA. Section 504 applies to every student and no application is required to confirm eligibility. A student is automatically eligible if he or she (1) has a physical or mental impairment; (2) that substantially limits one or more major life activity or (3) record of impairment or (4) regard as having such impairment. A student who has a Section 504 may not have any learning issues. For example, a child who is paralyzed and is in a wheel chair will have a Section 504.

Differences between IEPs and Section 504

Unlike IEP's, parental consent is not required with a Section 504. Instead, a school district must offer a student services if it knows or should have known that the student needs them. There are greater consequences to teachers and school districts if they violate Section 504 than for a violation of IDEA. Teachers can be personally liable and their school district and Union cannot protect them. School districts can be subject to civil damages if they violate Section 504.

If you believe your child needs an IEP or a Section 504, you should consult with an attorney skilled in [educational law](#) and administrative procedures to understand and protect your child's rights and the process of achieving his or her goals.