

What Works Best? IEP or 504?

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In our office, we often field such procedural questions as:

- "Does this fall under section 504 or should it be special education?"
- "I have a student with an IEP; can he have a 504 plan too?"
- "Can a student who needs occupational therapy get that if he has a 504 plan?"

As with any area in working the Individuals with Disabilities Education Act (IDEA), its subsequent reauthorizations, and section 504 of the Rehabilitation Act of 1973, there are no clear cut parameters. Decisions differ based on the student's disability, severity, setting, and more. In legalese, students with identified disabilities under IDEA also fall under section 504; however all students who are identified under 504 do not qualify under IDEA. Confusing? You bet!

In a nutshell, the general difference in making the distinction between eligibility under 504 and eligibility under IDEA is the very definition of special education.

"Special education means specially designed instruction, at no cost to the parent or parents, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education:

Speech language pathology services;

Vocational education; and Travel training." [COV 300.26 (b) (3)]

Individuals who qualify for services under 504 shall not be "excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance:" 29 U.S.C. Sec. 794.

IDEA only applies to individuals ages 3-22. IDEA applies to public schools, and is an education act, whereas section 504 is an access law. Section 504 pertains not only to educational facilities but all public agencies. Individuals of all ages can be identified under 504.

Special education and services defined by an Individualized Educational Program (IEP) refer to "spe-

cially designed instruction". Special education teachers are trained to work with students with disabilities and their instructional methods are different than general education teachers. Related services such as physical and occupational therapy, counseling services, etc. are required for students in their IEP when they are needed to "assist a child with a disability to benefit from special education." [COV sec. 22.1-213; 34 CFR sec. 300.24(a)]

Students identified as eligible for a 504 plan remain the responsibility of the general education program. When a 504 plan is developed, the plan refers to the need for students to have "accommodations and modifications" to gain equal access to the same opportunities as their non-disabled peers. If an eligibility team considers the evaluation data and determines that a child has a disability but may only need accommodations that can be managed by the general education staff or related services staff (preferential seating, tests read aloud, etc.), a 504 plan would be appropriate. Students with 504 plans are not served by the special education staff as are students with IEPs.

To give some examples, a student with an orthopedic impairment who uses a wheelchair for mobility but has no other unique learning or educational needs, may easily qualify under 504, but not IDEA.

Another example may be two different students each identified with learning disabilities. Student A makes good grades in the general curriculum. He happens to be in a collaborative class taught by both a general education and a special education teacher. He does well as long as he has additional time to take his tests. Currently, this is the only accommodation needed to support him any differently than his non-disabled peers. This student can qualify under Sec. 504 and his plan with an accommodation of "extended time on tests."

Student B is also identified with a learning disability. He is in the same collaborative classroom with both a general education and special education teacher. He participates in the instruction with the entire class but needs added instructional strategies and re-teaching by the special education teacher to grasp the concepts. He needs his tests read to him and clarification of the instructions and some test items. This student should qualify for special education under IDEA and be monitored by an IEP that outlines this "specially designed instruction".

In summary, determining whether to use a 504 plan or an IEP is challenging. The people who deliver the service and how "specialized" the services need to be are some of the factors that should be considered. Whether it is a 504 plan team or an IEP team, the key focus is the unique needs of the student. When in doubt, the team should reconvene frequently and monitor the student's progress closely. Available resources or additional evaluations are imperative for making sound decisions. ■