



BRAIN INJURY ASSOCIATION OF NEW JERSEY

825 Georges Road, Second Floor
North Brunswick, NJ 08902
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www.bianj.org

Helpline: 1-800-669-4323

No Brain Injury is
Too Mild to Ignore,
or Too Severe to
Lose Hope

What are IDEA and Section 504?

By Donna Bogart, Malia Corde, Lois Mishkin and Susan Paradise

Each family and child affected by brain injury faces a different situation. Your child may have been in the hospital, been transferred to inpatient rehabilitation, or received outpatient rehabilitation. Your child may have only been treated in the emergency department or the pediatrician's office and sent home. Although each of you has traveled different roads, you share the common goal of ensuring that your child goes back to school with an effective educational program. Upon your child's re-entry to school you will be overwhelmed by many of the special education terms you hear, and you will have many questions. This article will address the following: What is the Individuals with Disabilities Education Improvement Act (IDEA)? What is a Section 504 Plan? What are the differences between the two?

Overview of IDEA and Section 504

Differing degrees of supports or academic assistance can be obtained through the federal Individuals with Disabilities Education Act of 2004 (IDEA) or Section 504 of the Vocational Rehabilitation Act.

The Individuals with Disabilities Education Act, commonly referred to as IDEA or IDEIA (Individuals with Disabilities Education Improvement Act), is a federal law that governs special education services in the United States. This federal law provides for a free and appropriate education for all students from birth through 21 in the least restrictive environment. SPAN (the Statewide Parent Advocacy Network) explains IDEA as follows: IDEA guarantees a free appropriate public education to children and youth from birth through 21 who have a disability that affects their ability to learn and requires special education and related services to benefit from their education. Infants and toddlers with disabilities (birth-2) and their families receive early intervention services under IDEA Part C. Children and youth (ages 3-21) receive special education and related services under IDEA Part B. The New Jersey special education regulations include "traumatic brain injury" as one of the specific disabilities that may be covered under IDEA.

Section 504 of the Vocational Rehabilitation Act of 1973 was established before IDEA. It was the first anti-discrimination legislation that addressed people with disabilities. Section 504 protects an individual who has a physical or mental impairment that substantially limits one or more life activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working. It protects persons of all ages, not only school aged children. Almost every school in New Jersey receives federal funding of some type and is therefore obligated to adhere to Section 504 of the Vocational Rehabilitation Act. The Act also includes day care programs, before and after school programs, and



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recreational programs. The spirit of the law is to provide access through reasonable accommodations so all students benefit from their education.

There are some key differences between IDEA and Section 504. These differences are reflected in the chart below.

All children who are eligible for special education are considered disabled and, therefore, are protected under Section 504. However, all children who are considered to have a disability under Section 504 may not be eligible under IDEA. Eligibility for special education and related services under IDEA is determined collaboratively by a group of individuals that includes: the parent, a teacher who is knowledgeable about the student's educational performance, at least one member of the child study team, and the student (when appropriate). If deemed ineligible for IDEA services the child may be referred for Section 504 services through the Section 504 coordinator. As a parent, you have the right to be involved in this process, including requesting a meeting in writing with the Section 504 coordinator in your school district if the child study team does not refer your child to the Section 504 coordinator.

The following resources can provide additional information about special education and Section 504:

New Jersey Department of Education
Office of Special Education Programs
PO Box 500, Trenton, NJ 08625
609-292-0147
www.nj.gov/education/specialed/

Statewide Parent Advocacy Network (SPAN)
35 Halsey Street – 4th Floor, Newark, NJ 07102
1-800-654-SPAN
www.spannj.org

Education Law Center
60 Park Place – Suite 300, Newark, NJ 07102
973-624-1815
www.edlawcenter.org

New Jersey Protection & Advocacy
210 South Broad Street – 3rd Floor, Trenton, NJ 08608
1-800-922-7233
www.njpanda.org

Office for Civil Rights – New York Office,
U.S. Department of Education



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32 Old Slip, 26th Floor
New York, NY 10005-2500
646-428-3900
Email: OCR.NewYork@ed.gov

For more information, contact the Brain Injury Association of New Jersey's Helpline at 1-800-669-4323 or info@bianj.org and request a free copy of the Association's Guides for Families, Educators, and School Nurses.

	IDEA	Section 504
Purpose	To provide a free, appropriate public education (FAPE) in the least restrictive environment	To provide people with disabilities, to the maximum extent possible, the opportunity to be fully integrated into mainstream American life
Scope	Applies to all public schools (and charter schools)	Applies to any program or activity that receives federal financial assistance
Protection	Children and youth from birth through high school graduation who fall within one or more of the specific categories of qualifying conditions – Traumatic Brain Injury (TBI) is included as a category	Any person, child or adult, who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment – Individuals with brain injury are protected in and out of school
Legal	Procedures for ensuring enforcement are specified under the federal Individuals with Disabilities Education Improvement Act regulations	Procedures for ensuring enforcement are specified under the federal 504 and Americans with Disabilities Act regulations
Eligibility	Requires that a child's disability affects his/her educational performance - All students who are eligible under IDEA are also eligible for Section 504	Not all students who are eligible for Section 504 are also eligible for IDEA
Resulting Document	Child receives a comprehensive evaluation by a multidisciplinary team	Evaluation draws on information from a variety of sources and is documented
Evaluation	Requires an Individualized Education Program (IEP)	Does not require an IEP, but does require a written plan
Annual Review	IEP must be reviewed once a year at minimum	504 plan must be reviewed periodically, but it is up to the educational agency or institution to establish procedures for review
Reevaluation	Required every three years or more frequently if needed, or at request of the parent, but not more than once a year, unless the district and parent agree	Required before significant change in placement for school-aged children – Post-secondary education requirements vary from school to school

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