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COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.  
ATTORNEYS AT LAW

**Your Child's Rights Under  
Individuals with Disabilities  
Education Act (IDEA)**  
Section 504 of the Rehabilitation Act

by Rebecca K. Spar, Esq.  
Cole, Schotz, Meisel, Forman & Leonard, P.A.

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**Child Find or Location,  
Referral and Identification**

- School districts are responsible for conducting "child find" or locating, referring and identifying student who may have a disability "due to physical, sensory, emotional, communication, cognitive or social difficulties."
- Child find procedures are to include:
  - Utilizing strategies identified through the Intervention and Referral Services program as well as other general education strategies;
  - Referral by teachers, administrative and other professional staff;
  - Evaluation to determine eligibility for special education and related services.

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**Interventions in the General  
Education Setting**

- To be used where appropriate prior to referring the student for an evaluation
- If the parent makes a written request for an evaluation to determine eligibility, a meeting must be convened to consider within 20 days
- Staff must maintain written documentation of interventions

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### Evaluation

- The child study team, the parent and the regular teacher meet and prepare plan of evaluation
- Must conduct a full and individual evaluation and assess child in all areas related to the suspected disability, including, where appropriate, the child's social status

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### Evaluation (cont/d)

- Evaluation to be conducted "in the language or form most likely to yield accurate information"
- Evaluation includes a functional assessment of academic performance, and, where appropriate, a functional behavioral assessment
- Must include at least one structured observation in other than a testing situation
- Private evaluations submitted by the parents must be reviewed and considered
- Evaluations and preparation of Individualized Education Program (IEP) must be completed within 90 days

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### Child with a Disability

- Between the ages of 3 and 21
- Has one of the disabling conditions listed in the federal or state statutes or regulations
- The disability adversely affects the student's educational performance
- Student is in need of special education and related services

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### Disabling conditions in the State of New Jersey are:

- Auditorily impaired
- Autistic
- Cognitively impaired
- Communication impaired
- Emotionally disturbed
- Multiply disabled
- Deaf/blindness
- Orthopedically impaired
- **Other health impaired**
- Preschool child with disability
- Social maladjustment
- Specific learning disability
- Traumatic brain injury
- Visually impaired

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### Other Health Impaired

“Other health impaired” corresponds to “chronically ill” and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as...

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### Other Health Impaired (cont'd)

...attention deficit disorder or attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as **Tourette Syndrome**, that adversely affects a student’s educational performance. A medical assessment documenting the health problem is required.

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**Disability Must Adversely Affect  
Educational Performance**

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**Educational performance  
involves more than academic  
needs**

- Basic self-help skills
- Social skills
- Emotional needs
- Physical growth
- Toileting
- Behavior
- Ambulation
- Development of personality

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**Meaning of “Adversely Affects”**

- Neither federal nor state law define “adversely affects”
- The phrase has no qualifier requiring the adverse affect to be “substantial” or “significant”
- There is no requirement that the condition adversely affect educational performance over a long period of time

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### Meaning of “Special Education”

- “Specifically designed instruction, at no cost to parents to meet the unique needs of a child with a disability including...instruction in physical education”
- “Special education” includes instruction conducted “in the home, in hospitals and institutions”
- “Special education instruction” includes speech language or other related services if the service is considered special education rather than related services under state standards

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### Meaning of Special Education (cont'd)

- “Special education” includes travel training and vocational education
- “Specifically designed instruction” means “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction;” and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children

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### Free Appropriate Public Education (FAPE)

- Significant learning
- Meaningful educational benefit
- Student’s potential

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### Least Restrictive Environment (LRE)

- Restrictiveness = amount of time student is educated outside of general educational setting
- Priority of IDEA is to educate students with disabilities in the LRE
- A child with a disability is not to be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum

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### Supplementary Aids and Services

The district must first consider placing a student in the general education class with supplementary aids and services, including:

- Curricular or instructional modifications or specialized instructional strategies
- Assistive technology devices and services
- Teacher aides
- Related services
- Integrated therapies
- Consultation services
- In-class resource programs
- One-on-one tutoring or remediation of reading, writing, spelling and arithmetic skills

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### Technical Assistance and Training

Teachers and administrators must be provided with technical assistance and training needed to successfully include children with disabilities

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**Positive Behavioral Interventions**

If a child's behavior impedes her learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports to address the challenging behavior

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**Extracurricular Services and Activities**

District must ensure that each child with a disability participates with non-disabled children in the extracurricular services and activities with supplementary aids and services

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**For students in an out-of-district placement, the IEP is to:**

- Provide how the student will participate with non-disabled peers in extracurricular and non-academic activities
- Set out the means to achieve such participation

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### Home Instruction

- Can be available where other less restrictive program options have been considered and been determined inappropriate

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**Section 504 of the Rehabilitation Act is a civil rights statute aimed at ending discrimination against the disabled. It provides:**

No otherwise qualified individual with a disability in the United States, as defined in §706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

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**Section 504 claim is established by showing:**

- student is an individual with a disability;
- student was “otherwise qualified” to receive educational services from the school district;
- the school district is a recipient of federal financial assistance; and
- the student was excluded from participation in, denied the benefits of, or subject to discrimination by the school district **solely** because of his/her disability.
- In addition, there must be evidence showing that the school district knew or reasonably could be expected to suspect or know of the student’s disability

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**An “Individual with a Disability”  
is a student who has:**

- a physical or mental impairment that substantially limits one or more major life activities of such individual;
- a record of such an impairment; or being regarded as having such an impairment

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**Physical or mental impairment**

“Physical or mental impairment” **includes** neurological, musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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**Major Life Activities**

- In general, “major life activities” include but are not limited to “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- “Major life activities” also include “the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.”

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**“Substantially Limits”**

Congress recently overturned United States Supreme Court cases and federal regulations which defined the term “substantially limits” as “significantly” or “severely” restricted. Congress also rejected case law which held that the effects of mitigating measures such as medication had to be considered in determining whether the individual was substantially limited. Effective January 1, 2009, whether an individual is “substantially limited” is to be construed in favor of broad coverage and without regard to the effect of mitigating measures.

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**“Has a record of such an impairment”**

Means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities

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**“Is regarded as having an impairment”**

An impairment does not have to limit or be perceived to limit a major life activity in order to satisfy the “regarded as having an impairment” definition

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**Eligibility may entitle individual with disability to:**

- accommodations
- modifications;
- FAPE including private placement;
- freedom from discrimination;
- freedom from harassment

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 **COLE SCHOTZ**  
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.  
Attorneys at Law

**Contact Information**

(201) 525-6284  
rspar@coleschotz.com

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