

# IEPs and 504 Plans: Navigating Special Education

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## Learning Objectives

- Individuals with Disabilities Education Improvement Act of 2004.
- Legal requirements to ensure a student is being provided with a FAPE.
- What an appropriate IEP includes.
- What is a 504 Plan and how to Obtain it
- What to do if you have a dispute with your school district.

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## Individuals With Disabilities Education Act (IDEA)

- Federal Law
  - Public Law 94-142 the Education for All Handicapped Children Act of 1975
  - Law mandated the role of parents as **equal** partners in making educational decisions for their children
  - Empowers parents to become **Educational Advocates** for their children

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## Individuals With Disabilities Education Act (IDEA)

- Ensures services to children with disabilities
- Governs how states and public agencies provide early intervention, special education and related services
- 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.

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## Goal Of IDEA 2004:

- To prepare them to lead productive and independent adult lives, **to the maximum extent possible.**
- Modified the purpose section to clarify that the purpose of IDEA includes not only preparing children with disabilities for employment and independent living but also preparation for **“further education.”**

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## Free Appropriate Public Education

- The Right to Special Education
- The right to related Services
- The right to be educated in the Least Restrictive Environment

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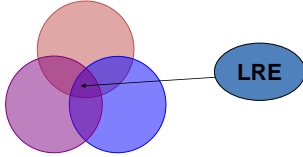
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# Only One LRE

APPROPRIATE PLACEMENT 1



APPROPRIATE PLACEMENT 2

APPROPRIATE PLACEMENT 3

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## Placement

- Placement is the appropriate learning environment for your child.
  - IEP team must consider placement in the regular education setting first.
    - Modifications-a change in the type and amount of work expected of the students.
    - Accommodations - change how students learn and the ways they demonstrate what they have learned.

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## Placement Cont....

- Consultation Services
- In-class resource programs
- Pull out resource programs
- Self Contained class
- A NJ approved private school for students with disabilities
- A non-approved but accredited private school for students with disabilities
- Residential Placement
- Home Instruction

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## Location, Identification & Referral

- Child Find- N.J.A.C. 6A:14-3.3 states that “all children between the ages of 3-21 who are in need of special education and related services, must be located, identified, and referred for evaluation and evaluated.”

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## Child Find

- Who Qualifies:
- Students between age of 3-21
- Diagnosed with a disability
- The disability must adversely affect educational performance (not required to fail).
- Who is in need of special education and related services

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## Who Can Refer?

- Any member of the school staff including teachers;
- Parents;
- Any outside agency concerned with the welfare of the child.

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## Eligibility

- CST, parent and the general education teacher who is knowledgeable about the child meet to determine whether evaluations are warranted.
- Speech-language specialist must also attend if the child is suspected of having a language disorder or is of pre-school age.
- Must test in ALL areas of suspected disability.
- 90 days
- Must provide copies of the reports at least 10 days in advance of the Eligibility Conference

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## Who Attends Eligibility Conference?

- The parent;
- The child, where appropriate;
- At least one of the child's general education teachers;
- At least one member of the CST who participated in the evaluation;
- The case manager;
- Other individuals whom the parent or school district wants to attend.

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## Continued

Certified school personnel (classroom teacher, special education teacher) who referred the child for evaluation, or the school principal or designee if they choose to participate;

When a child is evaluated for a language disorder, the speech-language specialist who conducted the evaluation.

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## Eligibility

- The school district must send you written notice of the eligibility team's determination, which explains your right to disagree and request mediation or a due process hearing.
- The child must meet the eligibility criteria in at least one of 14 categories.
- The disabling condition must adversely affect the child's educational performance creating an "educational need."
- The child must be in need of special education and related services.

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## Specific Learning Disability

- Corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and development aphasia.

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## Specific Learning Disability

- In determining whether a child has a specific learning disability, an LEA "shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability ..."
- The IQ-achievement discrepancy formula should not be a requirement for determining eligibility under the IDEA.
- No evidence that the IQ-achievement discrepancy formula can be applied in a consistent and educationally meaningful manner.

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## Special Education Process— continued

- If found eligible for special education, the district will develop an Individualized Education Program (IEP).

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## The Individualized Education Program (IEP)

- The IEP is the blueprint for the education and related services that the LEA provides for a child with a disability, together with the goals, academic assessment procedures, and placement of the child.
- The IEP must address the child's academic and functional needs, including non-academic needs related to behavior, social-emotional functioning and life skills.
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## IEP

- ALSO REQUIRES THAT “Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for implementation.”

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- ❑ The IEP is to detail any accommodations that the IEP team determines are necessary for measuring the child’s achievement and functional performance on state and district wide assessments
- ❑ Prior law required that the IEP contain a statement of “transition service needs” beginning at age 14
- ❑ The 2004 law changes the timing of this requirement to “not later than the first IEP to be in effect after the child is 16”

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## IEP

- The IEP must indicate what the school is going to do for the child- NOT what the child is going to do.
- The IEP must address all of your child’s school-related needs- not just those for which she/he has been referred. This includes behaviors that occur at school.

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## IEP

- The strengths of the student and the concerns of the parents for enhancing the education of their child
- The academic, developmental & functional needs of the student
- The results of evaluations conducted &, when appropriate, the student’s performance on any general State or district wide assessment

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## IEP

- In the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior
- The communication needs of the student
- Whether the student requires assistive technology devices and services

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## IEP Contents

- An IEP must contain the following:
  - A statement of the child’ s “present levels of academic achievement and functional performance,” including how the child’ s disability affects his or her involvement and progress in the general curriculum, or, for a preschool child, how the disability affects his or her participation in appropriate activities.”

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## Annual Goals

- For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.

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## Short Term Objectives

- Such measurable annual goals shall include bench-marks or short-term objectives related to:
  - i. Meeting the student’s needs tht result from the student’s disability to enable the student to be involved in and progress in the general education curriculum; and
  - ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.

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## The IEP Meeting

- At the end of the IEP meeting the parent must be provided with a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team.
- If agreement cannot be reached, the CST must develop the IEP.
- Must a parent provide consent for the IEP to be implemented?
- DRAFT vs. FINAL: an important concept
- 15 days notice

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## Placement

- Placement is the appropriate learning environment for your child.
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    - Accommodations - change how students learn and the ways they demonstrate what they have learned.

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## Special Education After the IEP Meeting

- Save your child’s IEP and all progress reports each year.
- Remember that IEPs must be reviewed at least once a year. The required meeting is often called the “Annual Review” meeting.

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## Re-Evaluations

- When are re-evaluations required?
- What re-evaluations need to be conducted?
- Can a parent waive the right to have a re-evaluation?

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What is FAPE, and will we know it when we see it?

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## Free Appropriate Public Education (FAPE)

- In accordance with IDEA, all disabled children are entitled to a free, appropriate public education (FAPE) specific to their unique needs. *20 U.S.C. 1412 (2)(c)*. The *Rowley* Court held that the Basic floor of opportunity will be met when a child receives “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”

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## FAPE Defined

- Provided at public expense without charge to the parent, under public supervision and direction;
- Meet the state’s educational standards (NJAC 6A:14-1.1 et seq)
- Complies with the child’s IEP
- Includes educational programming individually designed to meet the child’s unique needs and prepares the child for further education, employment and independent living

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## Education Is A Broad Concept!

- Communication
- Social
- Emotional
- Daily Living Skills
- Independent Living Skills
- Self Help Skill

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## Definition Of FAPE

- The Court in *Ridgewood BOE v. N.E.* defined FAPE as “significant learning” and “meaningful educational benefit.”



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## Definition Of FAPE

- In *Polk v. Central Susquehanna Int. Unit #16*, 853 F.2D 171(3<sup>rd</sup> Cir. 1988) the Court indicated that IDEA “calls for more than trivial educational benefit and requires a satisfactory IEP to provide significant learning and confer meaningful benefit.”



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## Definition Of Education

- Educational performance includes the child’s development of communication skills, social skills, and personality. *Mary P. v. Illinois State BOE*, 919 F.Supp. 1173 (D.N.D. Ill 1996)
- A district must consider non-academic areas in determining educational performance. *Letter to Lybarger*, 17 EHLR 54 (OSEP 1990)



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## FAPE

**“the court must consider the potential of the particular disabled student before it...The benefit must be gauged in relation to the child’s potential. When students display considerable intellectual potential, IDEA requires a great deal more than a negligible benefit.”**

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## Cadillac v. Chevrolet

- School Districts must provide **the educational equivalent of a serviceable Chevrolet to every handicapped student.**

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## ‘De Minimus’ Benefit Insufficient

- The educational benefit the student receives must be more than ‘de minimus.’
- There must be some tangible gain in abilities.
- More than trivial educational benefit.
- The IEP must confer meaningful benefit.
- **Andrew F. v. Douglas County School District RE-1, 580 U.S. \_\_\_\_ (2017).** Recent Supreme Court decision holding that IEP’s should be appropriately ambitious in light of the child’s circumstances.

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## Achievement of Goals

- The provision of FAPE does not necessarily require that a student achieve each of the IEP goals and objectives.
- The achievement of goals is one measure of educational benefit, but not the only measure.
- The IEP is not a performance contract.
- Passing grades and advancing from grade to grade are important factors to consider but they do not automatically confer FAPE.
- DS. V. Bayonne Board of Education.

# 504



A Section 504 plan is a legally binding education plan created under the authority of Section 504 of the Rehabilitation Act of 1973. A Section 504 plan creates modifications and accommodations for students with special needs who are attending general education classes.

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## Section 504

- Section 504 of the Rehabilitation Act of 1973:
  - Designed to prevent any form of discrimination for eligible students with a disability
  - Parents may request accommodations to level the playing field for eligible students with a disability- “equal opportunity.”

## Eligibility Under Section 504

- For purposes of Section 504, a “disabled person” is one who:
- Has a physical or mental impairment; which **substantially limits** one or more major life activities.
- Has a record of such impairment, or;
- Is regarded as having such an impairment. (it is about the degree of impairment, NOT the diagnosis.

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## What are Major Life Activities?

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Reading
- Concentrating
- Thinking
- Communicating
- Speaking
- Breathing
- Learning\*
- Working
- Behavior

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## What Factors Determine Substantial Limitation?

- Factors for determining substantial limitation include:
  - Does the impairment result in failure or under-achievement when compared to their same age, non-disabled peers?
  - Does the impairment impact a major life activity?
  - Does the impairment last at least six months?
  - Will the impairment disappear without any intervention from the school?

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## What are some examples of classroom Section 504 Accommodations?

- Tailoring homework assignments
- Changing the way a test is given
- Simplifying instructions about assignments
- Providing a copy of peer notes
- Supplementing verbal instructions with visual instructions
- Using behavioral management techniques

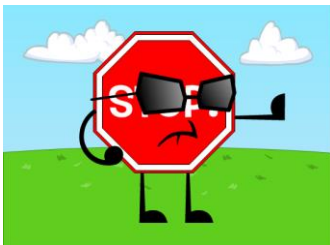
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## Continued

- Oral Testing
- Using tape recorder
- Computer-aided instruction
- Providing nursing services to supervise administration of medication

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*A Section 504 Plan is not as strong as an IEP*



Not So Fast...

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“It has been held that **Section 504 has a wider scope of coverage than IDEA** and that the definition of “individual with a disability” under Section 504 is in many respects broader on than the definition of “child with a disability” under IDEA. See Muller v. Committee on Special Educ. of E. Islip Union Free Sch. Dist., [145 F.3d 95](#), 100 (2d Cir. 1998). Moreover, for those children who are disabled under Section 504 but not under the IDEA, **the FAPE requirement under the Section 504 regulations may require something more than the IDEA.** See Bonnie P. Tucker & Bruce A. Goldstein, Legal Rights of Persons with Disabilities: An Analysis of Federal Law, Horsham, PA: LRP Publications, 1992 (updated 1994). Such children may include those who have an attention deficit disorder that does not impair the child’s academic success but substantially limits a major life activity other than education. Ibid.” Emphasis Added

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## Procedural Safeguards

- Once it has been established that a child will be evaluated, the school is required by law to give parents a copy of the “Procedural Safeguards Notice.”

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## Procedural Safeguards

Schools must provide a copy of the **Procedural Safeguards Notice**:

- Upon initial referral or parental request for evaluation
- Once each school year (for students eligible for IDEA services)
- When parents first file a complaint (either a state complaint or due process complaint)
- When the student is removed from his or her current educational placement because of a violation of a code of conduct
- Upon request by the parent.

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## Procedural Safeguards

### Parental Rights:

- to obtain independent educational evaluations (IEE)\*
- to consent prior to evaluations and to the school providing special education services
- to have access to their child's educational records

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## Dispute Resolution

Procedures for resolving parents' complaints against school districts include:

- Informal meeting with CST or Case Manager
- Mediation
- Resolution meetings
- Due process hearings
- File complaint with state DOE
- Appeals to state or federal courts.

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## Resolution Meeting

A new provision for a "resolution session" is added as a requirement prior to a due process hearing.

- Can opt for mediation instead of a resolution session.

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## Resolution Meeting

- The resolution meeting shall include a representative of the school district who has authority to make decisions on behalf of the school district.
- The school district shall not include its attorney unless the parent is accompanied by an attorney.
- If an agreement is reached at the resolution meeting, the terms of the agreement shall be incorporated into a written document and signed by the parties.
- If the agreement is not voided within the three business days, it is legally binding.

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## Mediation

Mediation is a voluntary process that is available to resolve disputes arising under this chapter. Mediation shall be available for students age three through 21 years when there is a disagreement regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education.

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## Due Process

- Is an administrative hearing conducted by an administrative law judge
- Resolves disputes regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action

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## Due Process

### Preparation:

- Obtain and review all student records
- Determine need for expert observations, evaluations, and reports.

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## Parent Rights

- The right to be considered a full participating member of the IEP team the planning for your child.
- The right to provide information about your child that can be used in developing interventions , evaluations planning and educational programs.

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## Parent Rights con' t

- The right to insure that your written permission is given before any formal evaluations are begun.
- The right to receive written notice prior to any changes in placement for your child.
- The right to access your child' s records, and have some one available to explain the records, if requested.

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## Parent Rights con' t

- The right to a complete evaluation, which includes more than one test or procedure and is completed by trained personnel from various education and/or medical areas of expertise, to receive copies of those results, and to have those results explained in a language you understand.
- The right to confidentiality of all records about the student.

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## Parent Rights con' t

- The right to a free and appropriate public education (FAPE) that addresses your child's individual needs.
- The right to request an independent assessment at no cost to yourself if you disagree with the assessment results.
- The right to be involved in the development of your child's Individual Education Program (IEP).

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## Parent Rights con' t

- The right to receive transportation and other related services necessary for the student to benefit from his or her special education services.
- The right to mediation and due process if differences regarding your child's program or services can not be resolved by other means.

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## COVID and School Reopening

- Hybrid vs. virtual learning
- Each District has own plan
- Obligation to provide FAPE remains.
- Compensatory education

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## TIPS

- **BE PREPARED-** Go into IEP conference knowing what you want.

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## TIPS(cont)

- **Send a letter in advance of the IEP conference**

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TIPS(cont)

- **Don't be adversarial**

- **Don't be afraid to share information**

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TIPS(cont)

**TIME LINES-** From the time you received a final IEP with which you disagree you have 15 days to file for mediation or due process to invoke "STAY PUT" otherwise that IEP goes into effect.

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TIPS(cont)

- **EXPERTS:** To convince a District to provide services or change a program or placement you need an expert.

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TIPS(cont)

• KNOW YOUR RIGHTS

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*Call or email with  
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