



# Wisconsin Family Ties

## Student's Rights to Special Education Services

Children with mental health conditions experience unique challenges in school. Their condition often impacts their ability to learn and interact with peers. Many children with mental health conditions are entitled to special education services and protections in school through two laws - the *Individuals with Disabilities Education Act (IDEA)* and *Section 504 of the Rehabilitation Act of 1973 (Section 504)*.

Key provisions in IDEA and Section 504:

- Both IDEA and Section 504 require schools to identify children aged 3 to 21 who are suspected of having a disability, including a mental health condition. This is known as the “child find” requirement.
- When a child is referred for evaluation for special education services under IDEA, the school must first obtain written parental consent before evaluating the child.
- IDEA requires schools to evaluate a child with an approach that produces accurate results, identifies what the child knows and can do, and assesses the child’s developmental, functional and academic progress.
- Children with mental health conditions most often qualify for special education under IDEA in these two categories:
  - ✓ **Emotional Disturbance (ED)** - a child must meet one of the following criteria to qualify in the ED category:
    - a. Inability to learn that cannot be explained by other factors.
    - b. Inability to build or maintain interpersonal relationships.
    - c. Inappropriate types of behavior or feelings under normal circumstances.
    - d. General pervasive mood of unhappiness or depression
    - e. Physical symptoms or fears.
  - ✓ **Other Health Impaired (OHI)** - The OHI category most often applies to children with behavior challenges associated with attention deficit/hyperactivity disorder (ADHD), Tourette syndrome, Bipolar Disorder or other health conditions that cause behavioral symptoms and impact a child’s ability to learn.
- A student’s special education services under IDEA are defined in the *Individualized Education Program (IEP)*. Parents and caregivers have a right to participate in developing the IEP.

- Whenever possible, the services and supports included in the IEP should be based on peer-reviewed research. For students with social or behavioral issues, positive behavioral interventions and supports (PBIS) and staff training on issues like behavioral management, should be addressed in developing the IEP. To learn more about PBIS, visit the technical assistance center at [www.pbis.org](http://www.pbis.org).
  
- Section 504 is much less detailed than IDEA. Section 504 provides children in school with protection from discrimination on the basis of their “disability.” A child is entitled to Section 504 protection if he or she has an identified physical or mental disability that substantially limits a major life activity, such as learning, concentrating, thinking or social interaction.
  
- Here are a few key differences between Section 504 and IDEA:
  - Section 504 is a civil rights law whereas IDEA is an education law.
  - Section 504 does not require a written plan like the IEP under IDEA. Parents who want a written plan that they have input on as a member of the IEP team should ask the school to evaluate their child for special education services under IDEA.
  - Section 504 requires schools to provide students with accommodations to ensure that they have the same access to education as students without a disability. Whereas, IDEA requires the development of a written IEP which outlines the services and supports that will be provided and the goals that will be achieved.
  - Both Section 504 and IDEA require schools to provide qualified students with an “appropriate” education, meaning one comparable to the education provided to students without a disability.
  
- Students who do not meet the eligibility criteria for IDEA services may still be entitled to the services and protections provided under Section 504. If a child is evaluated for special education services under IDEA and found ineligible, parents may wish to request that the school consider whether the child meets the criteria for Section 504.

Parents should learn as much as they can about their child’s rights under both laws so they can be sure they are making the best choice for their child.

To learn more about IDEA and Section 504, visit these websites:

- [www.parentcenterhub.org](http://www.parentcenterhub.org)
- <http://www.ideapartnership.org/>
- <http://www.wrightslaw.com/>

- <https://mattcohenandassociates.com/>
- <http://www.ndrn.org/index.php>

For more information about IDEA, please contact Wisconsin Family Ties for more information.

Resource: *Left Behind, Left Out: Strategies for Protecting Children's Rights in School* by Matthew D. Cohen, J.D. (Winter 2012 | Issue 19 | NAMI Beginnings).