

**Left Behind, Left Out or Kicked Out—
Strategies for Protecting Student Rights under IDEA and Section 504**

Notes from a presentation by Matt Cohen, J.D.;
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Mr. Cohen began his talk by asking audience members to distinguish between IDEA (special education services) and Section 504. There was a lot of confusion in the room, much of it based on the explanations parents were given when their children were denied individual education plans (IEPs).

Cohen presented slides that easily defined the two statutes: “IDEA is a funding statute requiring all states to comply with its conditions for funding special education” and “Section 504 is a civil rights statute requiring all recipients of federal funds to provide non-discriminatory services, including reasonable accommodations.” He emphasized that the IDEA is about funding for special education and the 504 is about providing non-discriminatory services; neither is about student test scores or diagnoses.

Interestingly, Cohen said that through a program called Child Find, *Illinois schools are obligated to identify all children suspected of having a disability, including an emotional or behavior disorder*. Parents or school staff may refer the child for an evaluation, and the school must obtain the parent’s written consent before conducting an evaluation.

The school must inform the parents if the school does not feel the evaluation is appropriate and the parents have the right to challenge the refusal. He said some school officials do not know that they are supposed to be *looking* for children in need of supports.

IDEA (2004) requires that schools:

- 1.) evaluate children in a manner and form that is likely to yield results
- 2.) identify what the children know and can do, and
- 3.) assess children’s developmental, functional and academic progress.

Cohen detailed the criteria for children who are “emotionally disturbed” and encouraged parents to log kids’ behaviors before and after school when kids have meltdowns and complaints regarding school stress and/or not wanting to go to school, etc. The log should be provided to the school to demonstrate (in an evidential way) what parents are saying narratively. He also noted that the computerized IEP form is there to *assist* the process—not to govern it. He advised parents to never allow a school official to tell them that something can’t be included because it can’t be input into the form. Instead, parents should have staff include an addendum, if necessary.

Eligibility based on emotional disturbance is ruled out if the child's behavior is due to other causes, including: medication issues, physical explanations, drug/alcohol use, learning disability, TBI/Autism, communication disorders, other health impairments (ADHD, Tourette Syndrome, Bipolar Disorder), or the disability may be more appropriate under another disability category. He noted that labels can be highly stigmatizing-- and also provide services.

Cohen emphasized that special education intervention does not mean that a child needs to go to a special education classroom—only that s/he needs specialized instruction/services. Also, the right to free, appropriate public education means that every child is entitled to get necessary services, not “the best” services.

Cohen's slide presentation offered lists of services that kids with emotional disturbances can receive. They include but are not limited to:

- Any non-medical service necessary for the child to benefit from education
- school social work, psychology or counseling
- social skills counseling
- 1-1 aides to provide structure
- positive reinforcement system
- parent counseling (for ex., to help parents work better with kids on homework if the child has executive functioning deficits)
- medication administration
- transportation if disability makes walking unsafe

Additional strategies may include:

- training programs for staff and students
- monitoring strategies (alertness coupled with privacy protection)
- services to address academic consequences of emotional and behavioral problems

Special arrangements may include:

- adjusted class schedules and extended time for homework and tests
- possible homebound tutoring plans as needed
- monitoring by school nurse or trusted staff person
- provision for homework backup plans

Special considerations include:

- variability of symptoms and manifestations may confuse staff
- calling attention to problem may cause adverse reactions or stigmatize student or others
- provide caring/trusted adult to provide support to student

Cohen touched briefly on the IEP process, emphasizing that parents should articulate children's needs at the beginning of the process so staff clearly

understand who children are at their cores and what staff should and should not do when interacting with them. Parents should also make plans involved enough so school officials can't impose punitive/exclusionary discipline on children. Specifically, steps should be put in place so punishments can't build one on top of the other so students have no way of making amends and moving ahead.

- The IDEA v. the 504
 - 504 --less stringent eligibility
 - 504 --less cumbersome regulations
 - 504 --less stigmatizing
 - 504 --less involved evaluation

- IDEA –more stringent evaluation
- IDEA –easier access to full continuum
- IDEA –greater/specific parent rights & procedural safeguards
- IDEA –heightened due process safeguards

- Resources:
 - Matt Cohen's book, "A Guide to Special Education Advocacy: What Parents, Advocates and Clinicians Need to Know," available at:
 - <http://www.amazon.com/Guide-Special-Education-Advocacy/dp/1843108933>
 - www.Mattcohenandassociates.com
 - disablethelabels.blogspot.com
 - www.nami.org
 - www.ldonline.org
 - <http://www.nationaleatingdisorders.org/educator-toolkit>
 - www.chadd.org
 - www.napas.org
 - <http://nichcy.org/>
 - www.copaa.org