



Key points:

- Address parents' misconceptions about special education
- If parent declines IDEA evaluation, get it in writing
- Revisit child's 504 plan, need for IDEA services periodically

What do you do when a parent refuses special education and wants a 504 plan?

What if a student is found eligible for special education, but her parents decline, preferring Section 504 services for their child instead? Currently, the courts seem split on the issue.

Some have ruled that a district has no flexibility to opt to provide services and accommodations under Section 504 when a student is IDEA-eligible. They hold that if parents reject services under the IDEA, then they also reject them under 504. *See, for example, Yankton Sch. Dist. v. Shramm*, [24 IDELR 704](#) (8th Cir. 1996); *Chicago Sch. Dist. 299*, [54 IDELR 304](#) (SEA IL 2010); and *Lamkin v. Lone Jack C-6 Sch. Dist.*, [58 IDELR 197](#) (W.D. Mo. 2012).

Other courts have held that districts violated Section 504 by not offering services in certain instances to students who rejected IDEA services. *Northampton Area Sch. Dist.*, [63 IDELR 89](#) (SEA PA 2014); *D.F. v. Leon County Sch. Bd.*, [62 IDELR 167](#) (N.D. Fla. 2014).

"Cases across the country are starting to be split on this issue," said Betsey Helfrich, a school attorney at [Mickes O'Toole LLC](#) in St. Louis. "Either way, I would make sure you're giving informed consent to the parent about the IDEA and what it entails, and then I think you need to decide as a district and with your legal counsel as to whether you will offer a 504 plan."

Here are some other steps you can take when faced with this situation:

- **Understand procedural variations.** It's troubling for the district if the parents are seeking the same supports under 504 as the IDEA, said Catherine L. Lyons, a school attorney at [Lyons & Rogers LLC](#) in Rockland, Mass. "That can be problematic because accountability is not delineated like it is in special education," she said. Requirements such as conducting the evaluation in a timely manner, developing an IEP, having measurable goals and objectives, and providing parents with regular progress reports on how their child is performing and progressing -- all of these are mandated by the IDEA, Lyons said. But other than the evaluation, they are not mandated components of a 504 plan, she said.

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- **Explain the differences.** "There's a lot of misconceptions about special ed," said Lisa Hardcastle, Section 504 coordinator for the [Clear Creek \(Texas\) Independent School District](#). "We have to undo some of the false information out there," she said. Hardcastle said that in the past month she's heard from two different parents the false statement that if their child is in special ed, then the child won't receive a regular diploma. "On the internet you can read some wild, inaccurate stuff," Hardcastle said. "I'm of the belief that [providing] good information to parents will undo a lot of the misconceptions that are out there."
- **Alleviate fears.** Some parents may not want their child to have a special ed label, Hardcastle said. Talk to them about confidentially. In Hardcastle's district, most students in special ed are educated in the general ed classroom with everyone else for most of the day, and she informs parents of that as well.
- **Get it in writing.** If you think a student needs to be in special education, you have an obligation to suggest that to the parents first, Hardcastle said. "Do your best to explain special education, and then provide [the parents] with the consent to evaluate form," she said. If the parents check no, then evaluate under 504, she advised.
- **Try again.** Even if the parent denies special education and the student does get a 504 plan, you can try again later to offer services under the IDEA, Hardcastle said. "If the student continues to have difficulty," she said, "we revisit every nine weeks or every semester and say to the parents, 'We're doing this and it's not enough. Would you consider special education at this point?'" They do the same thing if the parents revoke consent for their child already in special ed: evaluate under 504, explain the different services to the parents, and revisit the child's situation periodically. "We're supposed to be doing what's right for the child and not just what the parent wants," she said.

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