

***Seizure Disorders Facts and Issues (SDFI)***  
Epilepsy Foundation of America  
Landover, MD

## **Elementary and Secondary Education and Federal Law**

While most children with epilepsy can participate with the other students in the classroom, some may require additional services, such as being allowed to take medication during school hours. Federal law, as well as many state laws, grants children with epilepsy the right to receive those supplemental services and if necessary, special education. These federal laws are known as the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

### **IDEA and Your Right to a “Free, Appropriate Education”**

IDEA, formerly known as the Education for All Handicapped Children Act, P.L. 92-142, guarantees children with disabilities a “free, appropriate public education.” This means that local school districts must develop and pay for an educational program that is tailored to the individual needs of the child with a disability. In some situations, the local school district may even be legally required to pay tuition at a private school or the cost of an outside provider if it is unable to provide the needed services in its own schools.

To qualify for protection under IDEA, a child must have a disability that adversely affects his or her ability to learn, and thus needs special education and related services. “Special education” includes instruction that is specifically designed to meet the child’s unique needs that result from a disability. It can involve adapting the content, methodology or delivery of the instruction. Disabilities covered under IDEA may include health impairments such as epilepsy, as well as traumatic brain injuries, learning disabilities, mental retardation and autism. (A child with epilepsy or another disability who does not qualify for services under IDEA may,

however, qualify for services under Section 504 of the Rehabilitation Act, as discussed below.)

By law, public schools are required to educate children with disabilities in the “least restrictive environment” possible. This means schools cannot place a child with epilepsy in a special education classroom, away from students who do not have a disability, simply because the child with the disability requires special services. Instead, the school must allow these children to be mainstreamed and provide the related service in some other way, such as having the child visit the nurse at a designated time each day to receive medication.

For a child with epilepsy, commonly requested related services include: health services (such as administration of medication in the event of a prolonged seizure), specialized recreation services (for a child with uncontrolled seizures), counseling (to compensate for the social adjustment aspects of epilepsy) and other non-instructional services. Specialized instruction may also be necessary to compensate for accompanying learning disabilities or other cognitive impairments resulting from frequent losses of consciousness or other impairment of attention or learning ability. In some situations, it may be appropriate for the child to receive this instruction once a week for an hour at a time, for example, whereas in other situations, the severity of a child’s disability requires he or she receive specialized instruction full time. Under IDEA, the school is required to provide effective educational services in the least restrictive environment, including any related services that may be necessary to educate the child.

By law, school personnel, parents, and when possible, the child, must work together to identify the child’s educational and related-service needs and to develop a plan to ensure that these needs are met effectively and in the least restrictive environment possible. This process is called the Individualized Education Plan (IEP). Any child between 3 years old and 21 years old has the right to be evaluated at least once every three years to determine if he or she needs to develop an IEP. (Some states have similar requirements for children under 3 years old. For information about these state programs, ask your child’s pediatrician or contact the local board of education.) If an IEP is required, by law it must be put in writing and reviewed on a yearly basis. It is important to list all needed services since schools are not required to provide services that are not listed. Parents and students have a right to participate in the meeting, which must be scheduled at a mutually convenient time for all participants.

If you believe your request for an IEP has been unfairly denied, the IEP developed does not fit your child's needs, or you have another concern about the IEP process, and are unable to resolve the dispute with school personnel, you may request mediation, request a due process hearing, or file a complaint with your state's education agency. (A due process hearing involves an impartial third party, called a hearing officer, who hears the evidence about a dispute and issues an opinion regarding the requirements of IDEA.) For more information about requesting mediation in your state, visit the Consortium for Appropriate Dispute Resolution in Special Education (CADRE Caucus) website, <http://www.directionservice.org/cadre/state/>. For additional information about IDEA, visit the U.S. Department of Education's Office of Special Education Programs Web site at <http://www.ed.gov/about/offices/list/osers/osep/index.html>. Also, for a Web site which provides an overview of IDEA and a discussion of advocacy strategies, see <http://www.fape.org/idea>.

### **Section 504 and Your Right to Be Free From Discrimination**

Section 504 prohibits schools that receive federal funding from discriminating against a child because of disability in academic and nonacademic activities, such as school field trips and extracurricular activities. The law also requires schools to provide a child who is otherwise qualified to participate in the particular activity a reasonable accommodation. A reasonable accommodation is a modification in a program or policy, or an auxiliary aid that enables an individual with a disability to participate in a program. Depending upon the child's needs and the activity involved, a reasonable accommodation may include administering medicine at a particular time in accordance with a doctor's directions, waiving a requirement that all children be able to swim in order to attend a general recreational program, or allowing the child to attend the program on a reduced schedule.

Your child is only entitled to a reasonable accommodation under Section 504 if he or she has a disability as the law defines it. This means he or she must have an impairment that substantially limits one or more major life activities. Examples of major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing or learning. If your child needs a reasonable accommodation, you should request that the school develop a Section 504 Plan. If your child qualifies for both Section 504 and IDEA, you can address both needs in the IEP alone. If you believe your child's rights under Section 504 have been

violated, you may file a complaint with your regional Office of Civil Rights of the U.S Department of Education or sue in federal court. Information on filing a Section 504 complaint and the electronic form can be found at:

<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>. Alternatively, you may call (800) 421-3481, (TDD) (877) 521-2172. For particularly helpful and detailed guidance from the Department of Education on Section 504, see “Frequently Asked Questions About Section 504 and the Education of Children with Disabilities,” which is available at <http://www.ed.gov/about/offices/list/ocr/504faq.html>. To locate your regional Office of Civil Rights, visit <https://wdcrocolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

### **Where Can I Find Help?**

The Families and Advocates Partnerships for Education works to improve the educational outcomes for children with disabilities. It links families, advocates, and self-advocates to information about IDEA. To contact the organization, go to <http://www.fape.org>, call (952) 838-9000, (952) 838-0190 TTY, or request information by writing to PACER Center, PACER Center, 8161 Normandale Boulevard, Minneapolis, MN 55437-1044. Additionally, assistance is available from the parent training and information centers (see [www.taalliance.org/centers/index.htm](http://www.taalliance.org/centers/index.htm)). Each state has at least one such center, which assists families obtain appropriate education and services for their children with disabilities; trains and informs parents and professionals on a variety of topics; resolves problems between families and schools or other agencies; and connects children with disabilities to community resources that address their needs.

For information on obtaining a referral to an attorney in your area that may be able to provide specific advice or representation, please visit the Web site for the Jeanne A. Carpenter Epilepsy Legal Defense Fund, at <http://www.epilepsy.com/get-help/legal-issues/>, or call our Epilepsy and Seizures 24/7 Helpline toll free at 1-800-EFA-1000 (1-800-332-1000). For general legal information about this and discrimination issues, please visit our Web site at <https://www.epilepsy.com/get-help/epilepsy-seizures-247-helpline>, or call our Epilepsy and Seizures 24/7 Helpline.

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