



"How I Advise My Clients" is a Special Ed Connection® feature that provides expert opinions from attorneys and education consultants for overcoming common problems and core challenges in the field. Each installment will include insights from multiple stakeholders, offering you a variety of perspectives to strengthen your efforts to serve students with disabilities.

Experts say:

- **Uncover reasons why parent wishes to revoke consent**
- **Consider eligibility under Section 504**
- **Advise parents that 504 plan will not provide FAPE under IDEA**

'HOW I ADVISE MY CLIENTS': What should a district do if a parent revokes consent under the IDEA and asks for a 504 plan instead?

A parent has the right to [revoke consent](#) for special education services. It's unclear, however, how that decision affects a school's obligations to that child under Section 504.

In 1996, OCR stated in *Letter to McKethan*, [25 IDELR 295](#) (OCR 1996), that rejecting services under an IEP is essentially the same as rejecting services under Section 504. A Missouri court used this guidance in its ruling in *Lamkin v. Lone Jack C-6 School District*, [58 IDELR 197](#) (W.D. Mo. 2012). Other courts have ruled that revoking consent under the IDEA does not affect the broader antidiscrimination protections under Section 504. See, for instance, *Northampton Area School District*, [63 IDELR 89](#) (SEA PA 2014), and *Kimble v. Douglas County School District RE-1*, [60 IDELR 221](#) (D. Colo. 2013).

Thus, **what should a district do** if a parent revokes consent under the IDEA and asks for a 504 plan instead?

Special Ed Connection® posed this question to school attorneys in the field. Read their responses, edited for length and clarity, below:

- **Laura Tubbs Booth, [Booth Law Group LLC](#), Minnetonka, Minn.:**

We advise our clients that when a parent revokes consent under the IDEA or refuses initial services, the district should consider whether the student may be eligible under Section 504 and what program changes the student may need to prevent discrimination by the school based on her disability. Our advice has evolved over the years. Initially, we read *Letter to McKethan* to preclude a 504 plan if the parent rejects IDEA services, in part because FAPE under the IDEA would not be provided via a 504 plan.

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We have modified our advice in recent years, and we advise our clients to consider a 504 evaluation and then ask whether the student requires any program changes in order to prevent discrimination. Our advice is based on our analysis that schools remain obligated to prevent discrimination based on disability even if the parents reject IDEA services. We counsel our school district clients to advise parents in a prior written notice that the 504 plan will not provide FAPE under the IDEA but that the district will implement the accommodations, modifications, and specialized instruction as required by Section 504.

Finally, we remind our clients that, under Section 504, the school needs parental consent to evaluate for Section 504 and the evaluation must be done before services can be provided. However, the school does not need parental consent to implement program changes for the student and should do so even if the parent disagrees. Parents can then use the grievance procedure to object to the services if they choose. The school district remains obligated to prevent discrimination against the student with disabilities regardless of the parent's agreement or disagreement with the 504 plan.

• **Wesley Johnson and Stacy Ferguson, [Escamilla & Poneck, LLP](#), San Antonio:**

Certainly, public school districts need to make sure that the parent executes a written Revocation of Consent form so that the record is clear that the child's removal from special education was the parent's choice.

A student who is able to easily make the transition from an IEP to an individual accommodation plan with general education support services may not have been appropriately identified as a student in need of special education services. Nevertheless, it is important for parents to understand that upon revocation of consent for special education services comes a cessation of services provided by a special education certified teacher (unless the district is split-funding its special education teachers to serve 504 students as well as special education students). It also means that there is no longer a continuum of instructional settings available for the child. Children who need smaller staff-to-student ratios in order to progress or who require a more rigid class structure may not receive as much educational benefit from the 504 program.

Allowing parents to come to their own realizations regarding the effectiveness of special education and special education supports can be the better approach. Make sure that written documentation exists, and ensure that the door remains open when and if the parent decides to provide consent for future IDEA services. Additionally, be sure to document the student's present levels of performance in all areas at the time of consent withdrawal and remain mindful that any new or different concerns can still trigger the LEA's child find obligations on any not yet identified need for service.

In addition, consider these pointers:

- If the relationship with the parents is not already adversarial, don't allow a revocation of consent to be the catalyst for the relationship to become adversarial.

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- Ask questions and listen to identify and understand the parent's reasons for withdrawal of consent.
- If withdrawal of consent is based on a particular program, service, or even service provider, then make attempts to return to the IEP committee to consider whether that particular part of the IEP can be reviewed and, if appropriate, revised.
- Don't overlook the benefits of monitoring a child's academic, behavioral, or functional progress after the cessation of special education services. The Section 504 committee can use such progress monitoring to inform parents and the team in a proactive manner regarding concerns and student needs.

[Jennifer Herseim](#) covers Section 504, education technology, and Common Core issues related to special education for LRP Publications.

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