

Frequently Asked Questions About Section 504: The Parent Perspective

Question: What is a 504 plan?

Answer: The "504" in "504 plan" refers to Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, which specifies that no one with a disability can be excluded from participating in federally funded programs or activities, including elementary, secondary or postsecondary schooling. "Disability" in this context refers to a "physical or mental impairment that substantially limits one or more major life activities." This can include physical impairments; illnesses or injuries; communicable diseases; chronic conditions like asthma, allergies and diabetes; and learning problems. A 504 plan spells out the modifications and accommodations that will be needed for these students to have an opportunity perform at the same level as their peers, and might include such things as wheelchair ramps, blood sugar monitoring, an extra set of textbooks, a peanut-free lunch environment, home instruction, or a tape recorder or keyboard for taking notes.

Question: How does a 504 plan differ from an IEP?

Answer: A 504 plan, which falls under the Americans with Disabilities Act, is an exercise in civil rights, an attempt to remove barriers and allow students with disabilities to participate freely. An IEP, which falls under the Individuals with Disabilities Education Act, is much more concerned with actually providing educational services. Students eligible for an IEP or Individualized Education Plan, represent a small subset of all students with disabilities. They generally require more than a level playing field -- they require significant remediation and assistance, and are more likely to work on their own level at their own pace even in an inclusive classroom. Only certain classifications of disability are eligible for an IEP, and students who do not meet those classifications but still require some assistance to be able to participate fully in school would be candidates for a 504 plan.

Question: Are 504 plans really necessary?

Answer: The kind of accommodations and modifications offered by a 504 plan are often the sorts of things you may have worked out privately with the school or the teacher in the past. Outlining these things in a legal document may seem like too much trouble and paperwork. But when dealing with bureaucracies, it's always best to get things down in writing. A new teacher, new principal, new superintendent, or a move to a new school or town can render all your handshake agreements invalid. Having a legally binding plan lets everyone know what's to be done and how to go about it, and promotes consistency and accountability.

Question: What's the difference between Accommodations and Modifications?

Answer: Accommodations are changes in course presentation, location, and timing. Student response or other attributes that are necessary to provide access for a student with a disability to participate and which do not fundamentally alter or lower the standard or expectations. **An accommodation is a change in how something is taught and/or assessed.**

Modifications are changes in these areas that are necessary to provide access for a student with a disability but which fundamentally alter and/or lower the standard or expectations of the course or curriculum material. **A modification is a change in what is taught and/or assessed.**

Question: Who is covered by Section 504?

Answer: To be covered under Section 504, a student must be "qualified" (which roughly equates to being between 3 and 22 years of age, depending on the program as well as state and federal law, **and** must have a disability) [34 C.F.R. §104.3(k)(2)].

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Who is an "individual with a disability"?

As defined by federal law:

"An individual with a disability means any person who:

- i. Has a mental or physical impairment which substantially limits one or more major life activity;
- ii. Has a record of such an impairment; or
- iii. Is regarded as having such an impairment" [34 C.F.R. §104.3(j)(1)].

Question: What is an "impairment" as used under the Section 504 definition?

Answer: An impairment as used in Section 504 may include any disability, long-term illness, or various disorders that "substantially" reduces or lessens a student's ability to access learning in the educational setting because of a learning-, behavior-, or health-related condition. ["It should be emphasized that a physical or mental impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities" (Appendix A to Part 104, #3)].

Many students have conditions or disorders that are not readily apparent to others. They may include conditions such as specific learning disabilities, diabetes, epilepsy, and allergies. Hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious, but if they substantially limit that child's ability to receive an appropriate education as defined by Section 504, they may be considered to have an "impairment" under Section 504 standards. As a result, these students, regardless of their intelligence, will be unable to fully demonstrate their ability or attain educational benefits equal to that of non-disabled students. The definition does not set forth a list of specific diseases, conditions, or disorders that constitute impairments because of the difficulty of ensuring the comprehensiveness of any such list. While the definition of a disabled person also includes specific limitations on what persons are classified as disabled under the regulations, it also specifies that only physical and mental impairments are included, thus "environmental, cultural, and economic disadvantage are not in themselves covered" (Appendix A to Part 104, #3).

Question: What are "major life activities"?

Answers: Major life activities include, but are not limited to: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others, and working. This may include individuals with AD/HD, dyslexia, cancer, diabetes, severe allergies, chronic asthma, Tourette's Syndrome, digestive disorders, cardiovascular disorders, depression, conduct disorder, oppositional defiant disorder, HIV/AIDS, behavior disorders, temporary disabilities (e.g., broken writing arm, broken leg, etc.). Students who are currently using illegal drugs or alcohol are not covered or eligible under Section 504.

Question: What does "substantially limits" mean?

Answer: Substantially limits is not defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, "this is a determination to be made by each local school district and depends on the nature and severity of the person's disabling condition." Additional guidance from the Americans with Disabilities Act states: "significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity when compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."

Question: Who can refer a child for consideration for evaluation under Section 504?

Answer: Anyone can refer a child for evaluation under Section 504. However, while anyone can make a referral, such as parents or a doctor, OCR stated in a staff memorandum "the school district must also have reason to believe that the child is in need of services under Section 504 due to a disability." (OCR Memorandum, April 29, 1993.)

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Therefore, a school district does not have to refer or evaluate a child under Section 504 solely upon parental demand. **The key to referral is whether the school district staff suspects that the child is suffering from a mental or physical impairment that substantially limits a major life activity and is in need of either regular education with supplementary services or special education and related services** [*Letter to Mentink 19 IDELR 1127* (OCR) 1993]. If a parent requests a referral for evaluation, and the school district refuses, the school district must provide the parent with notice of their procedural rights under Section 504.

Question: Who decides whether a student is qualified and eligible for services under Section 504?

Answer: According to the federal regulations:

“...placement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, placement options, least restrictive environment requirements, and comparable facilities” [34 C.F.R. §104.35(c)(3)].

Unlike Special Education, the federal regulations for Section 504 do not require or even mention that parents are to be a part of the decision-making committee. The decision to include parents in the decision-making committee is a determination that is made by each school district and should be spelled out in the district’s procedures for implementing Section 504. Parents should at least be asked and encouraged to contribute any information that they may have (e.g., doctor’s reports, outside testing reports, etc.) that would be helpful to the Section 504 committee in their determination of what the child may need. Schools are expected to make sound educational decisions as to what the child needs in order to receive an appropriate education.

Question: What information is used in doing an evaluation under Section 504?

Answer: Under Section 504, no formalized testing is required. The 504 Committee should look at grades over the past several years, teacher’s reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records, and adaptive behavior information. **Schools must consider a variety of sources.** A single source of information (such as a doctor’s report) cannot be the only information considered. Schools must be able to assure that all information submitted is documented and considered.

Question: Can my child be placed under Section 504 without my knowledge?

Answer: No. Parents should always be given notice in writing before their child is evaluated and/or placed under Section 504. (34 C.F.R. §104.36). Parents must also be given a copy of their child’s Section 504 accommodation plan if the committee determines that the child is eligible under Section 504.

Question: What types of accommodations will my child receive if determined eligible under Section 504?

Answer: Each child’s needs are determined individually. Determination of what is appropriate for each child is based on the nature of the disabling condition and what that child needs in order to have an equal opportunity to compete when compared to the non-disabled. There is no guarantee of A’s or B’s or even that the student will not fail. Students are still expected to produce. The ultimate goal of education for all students, with or without disabilities, is to give students the knowledge and compensating skills they will need to be able to function in life after graduation.

Accommodations that may be used, but are not limited to, include:

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note-taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements
- Behavior intervention plans

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- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Taping lectures
- Oral testing
- Individual contracts

Question: Will my child still be in the regular classroom or will he/she be in a “special class”?

Answer: A Section 504 eligible child will always be in the regular classroom unless (according to federal regulations): “... the student with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by §104.34” (34 C.F.R. §104.34, Appendix A, #24).

Question: Can my child still be disciplined under Section 504?

Answer: Yes. Children under Section 504 are still expected to follow the district’s student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior if the child is going to be removed from the regular setting for longer than 10 days. This does not mean that a student with a disability cannot be sent to a discipline center or that they cannot go to in-school suspension, or be suspended from school for three days. **Very strict guidelines exist for schools in discipline issues with students who have a disability under Section 504.** Your campus or district 504 coordinator can assist you in this area should you have additional questions concerning the discipline of students with disabilities. Children having disabilities with behavioral components should have individual discipline plans as well as behavior intervention plans.

Question: If I disagree with the school’s evaluation, will the school district pay for an outside independent evaluation?

Answer: Under Section 504, schools are not required to pay for an outside independent evaluation. If a parent disagrees with the school’s evaluation decision, they may request a due process hearing or file a complaint with the Office for Civil Rights. (See *Notice of Parent and Student Rights Under Section 504 of the Rehabilitation Act of 1973.*)

Question: How often will my child be re-evaluated?

Answer: While there are no specific time lines on this issue, students must be re-evaluated at least every three years or whenever there is going to be a “**significant change in placement**”. The campus 504 committee should re-evaluate your child’s plan every year to make sure that his or her accommodation plan is appropriate based on their current schedule and individual needs. The accommodation plan may be revised during the school year if needed.

Question: Will my child still be able to participate in non-academic services?

Answer: Yes. Districts must provide equal opportunity in areas such as counseling, physical education and/or athletics, transportation, health services, recreational activities, and special interest groups or clubs. However, the “**no pass, no play**” standard used for students in most states also applies to students under Section 504 (34 C.F.R. §104.37).

Question: What Are My Rights as a Parent under Section 504?

Answer: As a parent or legal guardian, you have the right to:

1. **Receive notice** regarding the identification, evaluation, and/or placement of your child;
2. **Examine relevant records** pertaining to your child;

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3. **Request an impartial hearing** with respect to the district's actions regarding the identification, evaluation, or placement of your child, with an opportunity for the parent/guardian to participate in the hearing, to have representation by an attorney, and have a review procedure;
4. **File a complaint with your school district Section 504 Coordinator**, who will investigate the allegations regarding Section 504 matters other than your child's identification, evaluation, and placement.
5. **File a complaint with the appropriate regional Office for Civil Rights.** For additional information, contact:

Office for Civil Rights
U.S. Department of Education
Washington, D.C. 20202-1100

800-421-3481
www.ed.gov/ocr
E-mail: ocr@ed.gov

Question: Do I Contact the State Education Agency (SEA) If I Have a Complaint Concerning Section 504?

Answer: No. The State Education Agency has no jurisdiction over Section 504 implementation. Complaints may be addressed to your local District 504 Coordinator or to the Office for Civil Rights.