

Section 504

Frequently Asked Questions

1. What constitutes eligibility under Section 504?

To qualify under Section 504, an individual must have a mental or physical impairment that substantially limits one or more major life activities. Districts must consider *all* major life activities, not just learning. However, eligibility alone does not constitute the need for a 504 plan. A 504 plan within the educational setting is based upon the need for accommodations within that environment, including academic and non-academic areas (e.g., recess, lunch, extracurricular activities).

2. Are substitute teachers required to have knowledge of students having a 504 plan and be expected to implement them?

Yes; it is the responsibility of the school district to ensure that substitute teachers have sufficient familiarity with and implement the provisions identified in Section 504 Plans of students with disabilities prior to teaching them.

3. How often are eligible students required to be re-evaluated under Section 504?

Periodic re-evaluation and reviews are required. Section 504 does not stipulate timelines. Many districts choose to adhere to the IDEA regulations, which require reevaluation at three-year intervals or more frequently if conditions warrant. It is recommended reviews be conducted annually, which again is in accordance with the Individuals with Disabilities Education Act (IDEA) regulations.

4. If a student no longer qualifies for an IEP (determined not to be eligible under IDEA, but may benefit from accommodations provided under a Section 504 plan (e.g., social work, OT, PT) in the general education environment, is the district required to evaluate the student for a 504 plan?

If an IEP team has determined that a child does not qualify for services under the Individuals with Disabilities Education Act (IDEA), and the district team thinks the student may benefit from services under Section 504, then *yes*, an evaluation is required. Section 504 of the Rehabilitation Act of 1973 (Section 504) is designed to protect the rights of individuals with disabilities in programs and activities that receive federal funds from the U.S. Department of Education. A districts' obligation under Child Find includes students who may require a Section 504 plan. A school district must provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability pending an evaluation and the identification of the need for a 504 plan.

5. If a student has an active behavior plan, must the behavior plan be included in and/or attached to the 504 plan?

The use of a behavior plan as an accommodation must be identified in the plan, but the actual behavior plan need not be attached to the 504 plan. Doing so would require that a 504 plan meeting be held and modified each time the behavior plan is modified.

6. What is Specially Designed Instruction?

Specially Designed Instruction is customized, supplemental instruction that includes evidence-based methodologies aligned with student needs.

7. What is required for the 504 evaluation process?

A group of individuals, who are knowledgeable about the student being evaluated, understand the evaluation data

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Section 504

Frequently Asked Questions

and the extent of information needed to determine eligibility should be involved in the evaluation process.

The actual evaluation must include a variety of sources, such as standardized assessment, teacher and parent input, observations, a records review, and any other information pertinent to the proposed need for accommodations. A medical assessment, or diagnosis, is not required under Section 504 and districts may not require a parent to provide any medical information or diagnoses. If a district requires a medical diagnosis from a licensed practitioner, the district is obligated to cover the expense.

“Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.” (U.S. Department of Education. Protecting students with disabilities. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/504faq.html>)

8. Is a district required to provide bussing to and from school under Section 504?

Transportation is considered a related service under Section 504 and must be provided to ensure equal opportunity and access to all district educational, extracurricular, and school-sponsored events, *if* transportation is provided to all students.

9. How do districts determine the need for a 504 plan vs. an IEP?

Determination for eligibility for an Individualized Education Program (IEP) under the IDEA is made by the IEP team. An IEP indicates that the student requires specialized instruction in order to receive educational benefit. Any general education accommodations deemed necessary by the IEP team are typically identified in the Supplementary Aids and Services section of the IEP. A student eligible under the IDEA is also eligible under the Americans with Disabilities Act Amendments Act (ADAAA). Eligibility under Section 504 requires that an individual has a physical or mental impairment that substantially limits one or more major life activities. Learning and/or grades may not be considered in isolation when determining whether a student meets the criteria of a substantial limitation in a major life activity. If a student requires accommodations without specialized instruction, then a 504 plan may be what the team determines is most appropriate.

10. If a student is eligible for both an IEP and a 504 plan, must the district provide both an IEP and a 504 plan?

No; the district must only provide an IEP. All general education accommodations that would be provided in a 504 plan would be identified in Supplementary Aids and Services and/or Programs and Services.

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Section 504

Frequently Asked Questions

11. What do you do when an evaluation is requested for a 504 plan with the sole intent of getting accommodations for the SAT, when the student has no need for testing accommodations in the classroom throughout the school year?

The district must consider the request for an evaluation within the confines of the definition of eligibility (see question #1) and not narrow the evaluation to accommodations for testing only. If the student does not require testing accommodations at any other time, it would be unlikely that the student would only require testing accommodations for district, state, and/or national assessments. Some testing accommodations require State Board approval. Adhere to all assessment practices if accommodations are required.

12. What is required for progress monitoring, specifically logs/documentation?

All accommodations that are identified on a 504 plan must be documented by the person responsible for implementation; this is often the general education teacher. The frequency of documentation is dependent upon the type of accommodation. Districts must be able to provide evidence of each accommodation as written in the plan.

Data is critical when making decisions regarding the need for new or continued accommodations. Records/logs are used when reviewing the effectiveness of accommodations. If accommodations are not recorded and a complaint is filed with the Office for Civil Rights (OCR), the district is at risk for being found noncompliant whether the accommodations were provided or not. This could result in the need for corrective action and financial retribution for the district.

13. What accommodations are allowable on a 504 plan? I have been told that services (e.g., occupational therapy) and programs (e.g., resource program) are not allowable. Is this true?

Services such as OT, speech, social work, etc. and programs are allowable on a 504 plan. If offered under a 504 plan, IDEA funds may not be used to cover the cost. Staffing must be prorated in accordance with the provision of accommodations per a 504 plan. If a student requires such support, teams may want to consider whether the student may need to be evaluated under the IDEA. If so, the IEP team will determine whether there is a need for specialized instruction. Refer to question #9.

14. If a student requires related services in a 504 plan, what must be included (e.g., logs, goals)?

Goals for related services are not required under Section 504. The related service, frequency and duration must be identified. Service logs must be maintained.

15. What is the difference between documentation and progress monitoring? Must both be done when a student has a 504 plan?

Documentation is a record of the implementation of each accommodation. Progress monitoring is an analysis of the effectiveness of an accommodation. This information may be used when determining whether an accommodation is necessary.

16. Are there specific forms that districts must use for the Section 504 process?

Districts are required to designate a 504 coordinator, adopt grievance procedures, identify and locate students with

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Section 504

Frequently Asked Questions

disabilities, provide notice of nondiscrimination, and establish procedural safeguards. A specific form is not provided by the federal government. Many districts have created forms and related procedural documents in collaboration with their legal counsel.

17. Does Oakland Schools offer a list of “go to” accommodations that may be used in 504 plans?

No; accommodations are individualized and based upon the data collected to determine the extent to which major life activities are substantially limited within the educational environment(s).

18. Must a student have a 504 plan to allow a teacher to provide an accommodation?

No; teachers may accommodate students without a plan. This is often a great way to gather data to determine the need for specific accommodations. If it is determined that the accommodations are an effective intervention, then this may trigger your Child Find obligation and the team may want to conduct a comprehensive evaluation.

If a student meets criteria under Section 504, and benefits from the accommodations provided to all students, districts must be able to provide evidence that the accommodations are being offered to all students (e.g., handbook, website). This allows for consistency among teachers, grade levels, and school districts if the student leaves the district.

19. Is a health plan the same as a 504 plan?

A health plan is not equivalent to a 504 plan. However those with health plans are likely eligible for a 504 plan. The health plan should be reflected in the 504 plan.

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