

ND PROTECTION & ADVOCACY PROJECT

EDUCATIONAL SUPPORTS: 504 & SPECIAL EDUCATION

Section 504 Plan and an Individualized Education Program (“IEP”) are each designed to provide appropriate and necessary modifications to and accommodations within the educational environments, programs and services to qualified students to maximize their educational outcomes. They have some similarities, but they also have significant differences. First and foremost, they arise under different laws: a 504 Plan is set forth by the Rehabilitation Act of 1973 and an IEP is outlined by the Individuals with Disabilities in Education Act (“IDEA”). This discussion addresses generally the similarities and differences.

504 PLAN

The name “504 Plan” comes from Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), a civil rights federal law that protects qualified persons from discrimination based on disability by any program, entity or activity that receives federal funds. Section 504 of the Rehab Act states, “No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance...” Providing they receive federal monies; the law applies to public and private post-secondary education institutions and local schools and school districts.

The definition of “disability” under Section 504 is the same as that definition under the Americans With Disabilities Act (“ADA”) and the Americans with Disabilities Act Amendments Act (“ADAAA”). To come under the purview of Section 504, individuals must have a:

- *physical or mental impairment*
- *that substantially limits*
- *one or more*
- *major life activities.*

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An impairment in and of itself is not a disability for 504 Plan purposes; it's only if it substantially affects one or more major life activities that it becomes a disability covered by Section 504. "Major life activities" are broadly defined under Section 504. They include physical and psychological functions, e.g., seeing, hearing, speaking, sleeping, walking, standing, breathing, eating, caring for one's self, learning, concentrating, reading, writing, interacting with others, communicating, ability to perform manual tasks, and major bodily functions, e.g., functions of the immune system, digestive track, and respiratory and circulatory systems. Because of this broad definition, it's often the case that students who do not meet the criteria of an IEP will qualify for a Section 504 Plan.

A student may be eligible for a 504 Plan regardless of whether the condition affects learning, providing the condition "substantially limits" a major life activity. Even a condition that is temporary in nature, e.g., a broken leg, can be a disability under Section 504 if it significantly disrupts the student's education during its duration.

A Section 504 Plan is under the coordination of general or "regular" education. It's focused on providing "educational access," meaning it is intended to provide fair and effective access to an education by an eligible student. It requires schools to provide appropriate, reasonable adaptations to the general education learning environment to meet the needs of the eligible student as adequately as those of students without disabilities. These changes and services are provided at no cost to the parents. An evaluation of the student is required to determine eligibility for services. Parents must consent to the evaluation. These evaluations are designed by the team working with the student and are limited to the specific questions the team needs to address.

There are no set requirements for who serves on the team. Team members should be persons who know the student and know and understand the student's disability. Members typically include the parents, the student's general education teacher, other educators who work with the student, a school administrator, and the student whenever appropriate. Except if a contemplated change in placement is "significant," a team meeting is not required. However, many schools have a policy that requires a meeting, as it's recognized that it's a "best practice" to have a meeting and to involve the

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parents and whenever appropriate, the student, in discussions and decisions about the 504 Plan content. Schools must designate a “504 Coordinator.” Finally, a 504 Plan has no set timeline for a review, but it’s a generally accepted practice that the Plan is reviewed annually.

INDIVIDUALIZED EDUCATION PROGRAM, “IEP”

Requirements for the education of students with physical or mental disabilities were originally addressed by the “Education of the Handicapped Act” passed by Congress in 1966, followed by the “Education for All Handicapped Children Act” passed by Congress in 1975. The law was subsequently renamed in 1990 as the Individuals with Disabilities Education Act, “IDEA.”

All public schools that accept federal monies are subject to the IDEA. Private schools do not receive public funds and do not have the same obligations as public schools to provide education services and benefits to children with disabilities. Thus, students with disabilities who are placed in private schools by their parents are not entitled to the same services as students who are enrolled in a public school.

IDEA is an education law. It’s intended to ensure that all students with disabilities receive a “free and appropriate public education” (“FAPE”) in the least restrictive setting, and the specialized instruction and individualized services and supports that meet the student’s unique needs. The plan to provide this specialized education program is the “IEP.”

To be eligible for services under IDEA, a student must have at least one of the 13 diagnoses or a related condition as specified in this law:

- autism
- hearing impairment
- deafness
- deaf-blind
- intellectual disability
- multiple disabilities [noncategorical delays]
- orthopedic impairment
- other health impairment
- serious emotional disturbance
- specific learning disability
- speech or language impairment
- traumatic brain injury

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- visual impairment, including blindness

An IEP falls under the management of “special education.” “Special education” under the IDEA is not a place or a placement. Its focus is “educational success,” meaning it’s intended to provide an educational benefit to that student that prepares the student for “further education, employment and independent living.” An accurate, comprehensive and individualized evaluation of the student is required to determine eligibility, along with the input of the IEP multi-disciplinary team to include the student and parents. It’s intended that the student and parents are an “equal partner” in the IEP process. Along those lines, the IDEA sets out safeguards for parents’ involvement in the development, implementation, monitoring and assessment of the IEP. Parents’ informed, written consent is required for an evaluation of their child, and once given, the evaluation must be completed within 60 calendar days. This evaluation is usually more comprehensive than a Section 504 evaluation, because the student’s needs are usually more complex. The IEP team meeting must be held within 30 calendar days of the eligibility decision. Membership of the IEP team is set out by law: parents, special education instructor, general education instructor, specialist who can interpret evaluation results, school representative with authority over special education services, and whenever appropriate, the student.

The IEP must consider the student’s present levels of academic achievement and functional performance and the impact of the student’s disability on her or his involvement and progress in the general education curriculum. It must identify individualized learning goals and specify the services, specialized instruction, aids and therapies for the student, along with the manner of measuring the student’s progress. The IEP goals must be aligned with grade-level content standards. All services are provided to the student at no costs to the parents.

Parents must receive timely notice of any IEP team meeting. The IEP must be reviewed at least every 12 months, or more frequently if needed. Parents may request an IEP team meeting at any time. A re-evaluation of the student is required to take place at least once every three years but may not occur more than once a year unless the parent and the school agree otherwise. A meeting is required before any change in placement, and timely notice of that meeting must be provided to the student’s parents.

BRIEF SUMMARY COMPARISON OF SECTION 504 PLAN AND IEP

	<u>504 PLAN</u>	<u>IEP</u>
What Law Applies	Section 504 of Rehabilitation Act of 1973, a civil rights law.	Individuals with Disabilities in Education Act, an education law.
What It Does	Prohibits discrimination based on disabilities by all entities that receive federal funding; protection for people of all ages. In school environment, it requires schools to provide services and changes to general education learning environment to meet needs of child as adequately as students without disabilities.	Requires public schools to provide to children with specific disabilities a Free and Appropriate Public Education (FAPE) through a specialized, individualized course of instruction with related services to meet the child's unique needs.
Who is Eligible	Children who have a disability as defined by this federal law that impacts their ability to learn in a general education class.	Children ages 3 – 21 who have a disability as defined by this federal law that affects their educational performance and ability to learn and benefit from general education curriculum, and therefore require specialized education curriculum. Schools also have responsibility to find students/adults with disabilities between ages birth to 21.
The Evaluation	Less formal, includes review of existing information such as medical reports. Parents can obtain additional evaluation at their expense.	Comprehensive, individualized, done by school. Parents may request independent evaluation, to be paid for by school. School may decline for proper reasons, then parents pay.
Plan Development	Created by a team of persons familiar with the child, including parents, and who understand the evaluation results and options for services and	Strict legal requirements about scope of evaluation, and make-up of IEP team. Team creates IEP. Team must include parents,

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modifications. The student should also be on the team whenever appropriate.

at least one gen ed teacher, at least one special ed teacher, one specialist who can interpret evaluation, school rep with authority over spec ed services, and whenever appropriate, the student.

Resolution of Disputes

Team meeting
504 School Grievance
Mediation
Due Process Hearing
Complaint to Office of Civil Rights (OCR)
Civil Lawsuit

Team Meeting
Facilitated IPE Team meeting
Mediation
State Complaint
Due Process Hearing
Civil Lawsuit

Resource Information from North Dakota Department of Public Instruction:

- <https://www.nd.gov/dpi/students-parents/sec504>
 - <https://www.nd.gov/dpi/studentsparents/SpecialEducation/>
 - <https://www.nd.gov/dpi/students-parents/SpecialEducation/SpecialEducationStateGuidelines/>
 - <https://www.nd.gov/dpi/SchoolStaff/SpecialEducation/SpecialEducationDisputeResolution>
- and:
- <https://www2.ed.gov/admins/lead/speced/privatechools/idea.pdf>
 - <https://sites.ed.gov/idea/>

FOR MORE INFORMATION, CONTACT:

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If you need this handout in an alternative format, please contact the Protection & Advocacy Project.



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