



IEPs and 504 Plans

Roots of Inclusion (June 2024)

Two Paths Towards Inclusion

Equal Access to Education Begins with Inclusion

All students have equal rights to participate in and benefit from a public education without discrimination. Students with disabilities, regardless of the nature of their disability, are entitled to a free appropriate public education (FAPE), consisting of access to the general education curriculum, work toward the same standards as their peers, and equal participation in extracurricular activities.

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society.

Individuals with Disabilities Education Act
33 U.S.C. § 1400

If students need any changes or supports to fully participate in the basic public education program, parents should consider requesting a 504 Plan or an individualized education program (IEP) so that students with disabilities have equal access to all school-related opportunities as their non-disabled peers.

Both 504 Plans and IEPs are individualized plans that support students with disabilities in school that are tailored to a student's needs and guarantee that they receive a free appropriate public education (FAPE). Only an IEP offers students "specially designed instruction." A student can have a 504 Plan without specially designed instruction, but there is no such thing as an IEP without specially designed instruction. This guide describes some of the similarities and differences between the two to inform your choice.

Exclusion is discrimination.

For students with disabilities, there are two primary federal laws that protect them from discrimination. The first is the federal Rehabilitation Act of 1973. Section 504 of the Rehabilitation Act protects the rights of individuals with disabilities in any program or activity that receives federal financial assistance or funding. It prevents any program or activity that receives federal financial assistance from excluding, denying benefits, or discriminating against anyone solely on the basis of disability.

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Rehabilitation Act Section 504
29 U.S.C. § 794

Public education is funded in part by federal money. Public district and charter schools therefore cannot exclude students with disabilities, deny them the benefits of an education, or discriminate against them.

The second federal law protecting students against discrimination is Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131. Congress enacted the ADA in 1990 to ensure people with disabilities had equal treatment and equal access to employment opportunities and to public accommodations. This law prohibits discrimination on the basis of disability in employment, services rendered by state and local governments, places of public accommodation, transportation, and telecommunications services. Title II of the ADA prohibits state and local governments from discriminating on the basis of disability. It incorporates the standards of other nondiscrimination laws and federal regulations. 28 C.F.R. § 35.103. Because Title II of the ADA does not change or add to the requirements of a free appropriate public education, this guide will focus on Section 504.

Individualized supports for students with disabilities prevent exclusion and discrimination.

One of the primary barriers to fully including students with disability in school is prevalent disability bias. School staff frequently see disability as a problem within a child that needs to be remediated or segregated. Support for students with disabilities is viewed as “extra,” “special,” and “uncommon.” From this perspective, support is a finite resource to be rationed for anyone

not perceived as having a bright future. When the perspective shifts away from viewing the disability as a student's limitation or problem and towards removing barriers in the environment so that the student with a disability can fully participate in every educational opportunity available to their peers, it becomes clear why a nondiscrimination law like Section 504 requires schools to provide supplementary aids and services to students with disabilities. Support services remove barriers in the school environment that prevent students with disabilities from participating fully in all school activities.

Section 504 Eliminates Barriers

Section 504 regulations require public schools to provide a “free appropriate public education” (FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability. Free means that the services must be provided at no cost to parents of students with disabilities; any fees charged for students with disabilities must also be charged to all other students. Appropriate means that a student has all regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities *as adequately* as the needs of non-disabled students and meet procedural requirements. This standard makes it clear that the support and services offered to a student are designed to remove the barriers to their full inclusion.

Who is eligible for Section 504 Protections?

A school-age student who has a disability is eligible for Section 504 protections. In Washington, students with disabilities are eligible for educational services between 3 and 22 years of age. A disability is a condition that substantially limits one or more major life activities. A student does not need to have a diagnosis or record of a disability to qualify for 504 protections. They simply need to be regarded as having a disability. For students with certain life-threatening medical conditions including epilepsy, diabetes, and allergies, school staff may implement an individualized health plan instead of a 504 Plan.

What can Section 504 do for a student?



Generally, all school-age children with disabilities are entitled to FAPE. What FAPE looks like depends on the student's needs, but a 504 Plan must ensure:

- Education services that meet the needs of students with disabilities as adequately as their peers;
- Inclusion of each student with a disability in the general education setting with their peers to the maximum extent appropriate;
- Evaluation and placement procedures; and
- Procedures that protect the rights of parents and caregivers to:
 - Receive required notices;
 - Review their child's educational records; and
 - Opportunity to challenge the school's decisions to identify, evaluate, and place the student through an impartial hearing and a review of hearing decisions.

With appropriate instruction relevant to their needs and accommodations, modifications, or related and supplemental services, all children can learn and participate in age-appropriate classrooms and extracurricular activities with the cooperation and collaboration from their school, home, and community.

Where do students with 504 Plans learn?

Students with 504 Plans learn in the same places where their peers learn. Depending on a specific student's strengths, skills, and support needs, they may be placed in gifted education programs or accelerated classes, general education classes, or smaller more supportive environments. Section 504 requires that all students with disabilities be placed in the same classes as their nondisabled peers to the maximum extent appropriate. The school must demonstrate that the student with a disability cannot satisfactorily achieve educational benefits in the regular environment with the use of supplementary aids and services, related services, accommodations, and modifications. A specific student with a disability may require pull-out

services, placement at home, or in private or public institutions. But the default is placement in general education programs.

Similarly, for nonacademic and extracurricular services and activities such as meals, recess, sports, and clubs, public schools must ensure that students with disabilities participate with their peers to the maximum extent appropriate to the student's specific needs. If a student needs to receive educational services in a different location from their peers without disabilities, the facility, services, and activities must be comparable to the facilities available for nondisabled peers.

IEPs Provide Specially Designed Instruction to Support Inclusion

The Individuals with Disabilities Education Act (IDEA) is a federal law. Unlike Section 504 or the ADA, it is not an anti-discrimination law. It focuses on education and guarantees that all eligible students with disabilities have available to them a free appropriate public education (FAPE) “that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. §1400(d)(1)(A).

The IDEA's requirements for a FAPE are more detailed than Section 504. Like Section 504, a FAPE means special education and related services that are provided at public expense under the supervision and direction of a public school. But the IDEA also adds that the special education and related services must be provided in conformity with a written individualized education program (IEP).

Who is eligible for an IEP?

A student who has been evaluated and determined to need special education services because of a disability is eligible for an IEP. A student is determined to need special education services when they have a disability and that disability has an adverse educational impact such that education exclusively in general education classes with or without individual accommodations do not meet their needs. **In other words, if a student can adequately receive regular**

classroom instruction and interventions other than specially designed instruction, then they may not be eligible for special education.

What does an IEP do for a student?

An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the procedures and standards described in state and federal law. It must contain, among other content:

- A description of the student's present levels of academic achievement and functional performance and the way that their disability impacts their progress in the general education curriculum;
- Annual goals aligned with grade-level content standards that are sufficiently challenging, ambitious, and measurable;
- A statement of the individualized special education and related services and supplementary aids and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, and to be involved in and make progress in the general education curriculum in accordance with their present levels of performance;
- The extent to which the student will participate with their nondisabled peers in the general education classroom and extracurricular and nonacademic activities; and
- The anticipated frequency, location, and duration of those services and modifications.

The heart of the IEP is “specially designed instruction.” This is the biggest difference between an IEP and a 504 Plan. A student can have a 504 Plan without specially designed instruction, but there is no such such thing as an IEP without specially designed instruction. Specially designed instruction is instruction that is specially designed or adapted in content, methodology, or delivery to meet the unique needs of a student with a disability. Specially designed instruction adapts the teaching for the student and their learning goals to ensure that the student can participate in the general education curriculum and meet the educational standards that apply to all students in the same grade.

An IEP does not replace the curriculum; rather, it helps the student meet the academic content standards for the grade in which they are enrolled. The annual IEP goals should be aligned with State standards and considered as part of the individualized decision-making. All students can learn grade-level content and make significant academic progress with appropriate instruction, services, and support. Low expectations and below grade-level content standards lead to less challenging instruction for children with disabilities that do not give them the opportunity to succeed at the grade in which they are enrolled.

Where do students with IEPs learn?

The purpose of the IDEA was for all students with disabilities to receive “appropriate special education and related services, and aids and supports in the regular classroom . . . whenever appropriate.” Washington State does not have a similar inclusive statement. Instead, it requires that students must receive special education services in their least restrictive environment (LRE). First, to the maximum extent appropriate in the general education environment with students who are nondisabled. A student cannot be removed from general education classrooms solely because they need modifications in the general education curriculum. If the student cannot achieve satisfactory educational services in general education classes even with the use of supplementary aids and services, in special classes, separate schools, home-based instruction, and instruction in hospitals and institutions.

Getting Started

How do I begin the process of getting a 504 Plan or an IEP?

The process begins with a referral. Anybody can refer a student for evaluation under Section 504 or the IDEA if they know or suspect that a student has a disability that requires accommodations to participate in or benefit from their public education. Parents and caregivers often refer a student for evaluation. Sometimes, the referral comes from a school teacher or a community member, such as a doctor or therapist.

A formal medical diagnosis is not necessary for a student to be regarded as having a disability or to be eligible for 504 Plans or IEPs

A formal request for a 504 plan or IEP begins when you write down the request. You can get help with writing the request from someone else such as a friend, family member, therapist, or other health care provider. It does not need to be technical or detailed.

Start by saying you would like your child to be evaluated for a Section 504 Plan or an IEP. Identify your child's disability or suspected disability. They do not need a formal diagnosis, but if they have one, then you can provide any documentation, such as medical records, formal evaluation reports, or a doctor's letter. If you do not know what the disability is, describe the kinds of issues you see your child struggling with. For example, if your child is struggling with math, explain the extent of the issues with some detail. Your child might not be far behind their classmates in skill, but if they are spending 10 hours per week doing math homework with a tutor or doing drills and exercises with you at home daily, then they might nevertheless have a disability that affects their mathematical skills. Take the time to write down all issues related to your child's academic needs, functional skills, social skills, communication skills, sensory needs, and emotional challenges. Schools are required to evaluate students in all areas of suspected disability. If your child has different types of problems they might need support for in school, ask for an evaluation in all areas.

Explain what the impact of the suspected disability is on their education. This does not require a technical explanation. Providing examples and personal observations on the levels of interventions you've been providing at home, ways in which social skills are impacting relationships at schools, or your child's statements about their difficulty engaging in classwork or desire to go to a specific class can be helpful to showing the impact of a suspected disability on education.

Send this written request to your student's teacher and school principal. If you are requesting a 504 Plan, send it to the district's Section 504 Coordinator. If you are requesting an IEP, send it to the district's special education director. Most schools also have a specific policy and procedure on special education. You can refer to your local public district or charter school's board websites, policies, or student handbooks for more information on who to contact for an evaluation.

Which one should I ask for?

Start by examining your child's needs. Does your child need specially designed instruction that is specially designed or adapted in content, methodology, or delivery to meet their unique needs? Some factors that may indicate the need for specially designed instruction include:

- There is a skill your child needs to develop to participate with their non-disabled peers in the general education curriculum;
- Your child is struggling to make progress despite their efforts and it seems like they need specific instructional strategies, techniques, programs, and approaches to keep up with the materials; or
- Their achievement is far below their capabilities.

If you believe your child requires changes in what they learn, how they learn, or the tools they need to learn with their peers, then this means that specially designed instruction might be appropriate and you should request a special education evaluation for an IEP. If you are unsure, then request the IEP evaluation. The purpose of an initial evaluation is to determine eligibility for specially designed instruction.

If you are unsure of whether your child needs a 504 Plan or an IEP, it might be helpful to know that Section 504 does not require a written document for a student to receive a FAPE under Section 504. While the U.S. Department of Education's Office for Civil Rights, the federal agency in charge of overseeing compliance with Section 504, "encourages" the use of a written plan; there is no legally required format, content, or review deadline for a 504 plan. To further complicate the matter, your local public school administrators may not realize or understand that they are responsible for providing families with the opportunity for a hearing if you disagree with the sufficiency or implementation of the 504 Plan. In most cases, it makes sense for families to request a special education evaluation for an IEP if there is any question whether their child needs specially designed instruction.

The Washington State Governor's Office of the Education Ombuds (OEO) recommends that **parents should request that the school evaluate for both IDEA and Section 504 eligibility** because a student who is not eligible for special education under IDEA may be eligible to

receive services under Section 504. A family that only requests an IEP might not automatically be evaluated for a 504 plan without requesting that specifically.

Conclusion

There are two main federal laws that protect the rights of students with disabilities to a free appropriate public education: the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Both of these laws protect the right of every student with a disability to a free appropriate public education (FAPE) – the promise that their needs will be met as adequately as those of their nondisabled peers. Section 504 focuses on anti-discrimination and accommodations and IDEA focuses on specially designed instruction for students who need that to have equal access to learning. Students with IEPs can have accommodations, but students who only have 504 plans do not have specially designed instruction. Consider both laws as resources for your student with a disability.

Resources

The Office of the Education Ombuds' recommendations on getting started with disability supports in school are available on their website:

<https://www.oeo.wa.gov/en/education-issues/supports-students-disabilities/how-does-student-get-started-special-education>

The U.S. Department of Education's Office for Civil Rights has guidance and policy statements on Section 504, including this guide on frequently asked questions:

<https://www2.ed.gov/about/offices/list/ocr/504faq.html>

The Office of the Superintendent of Public Education's guide to Section 504 is available at this link: https://www.ncesd.org/wp-content/uploads/2017/03/Section-504-and-Disabilities_OSPI.pdf

Disability Rights Education & Defense Fund has a helpful guide on the comparisons between the ADA, IDEA, and Section 504:

<https://dredf.org/legal-advocacy/laws/a-comparison-of-ada-idea-and-section-504/>

Congressional Research Service, "The Rights of Students with Disabilities Under the IDEA, Section 504, and the ADA": <https://crsreports.congress.gov/product/pdf/R/R48068> (May 17, 2024).