

Oklahoma State Department of Education

Section 504 Of the Rehabilitation Act of 1973

Elana Grissom
Project Manager – Alternative Placements



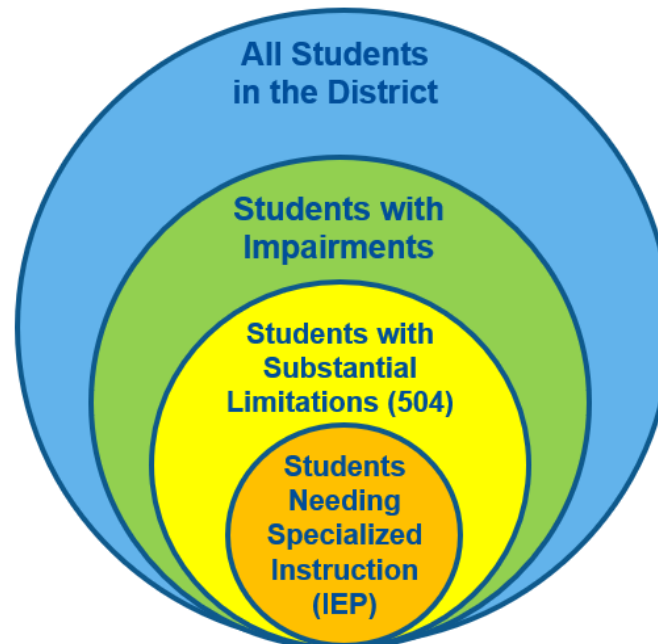
OKLAHOMA
Education



About Section 504

What is a 504 Accommodation Plan

- Section 504 is a civil rights law prohibiting discrimination against individuals with disabilities.
- Section 504 ensures that a student with a disability has equal access to an education. The student may receive accommodations and modifications.
- Section 504 provides the student accommodations to meet their unique educational needs.



Differences between Section 504 & IDEA

	SECTION 504	IDEA
Eligibility Determination	Student must have a physical or mental impairment that substantially limits one or more major life activities.	Criteria are more specific, and a student must qualify under a disability category and require special education and related services
Evaluations	Initial and “periodic”	Initial and triannual
FAPE	Needs met as adequately as those without disabilities	Individualized education program from which student receives educational benefit
Plan	OCR recommends a written plan to ensure equal access to the student with a disability.	An Individualized Education Program (IEP) is required.
Enforcement	Office for Civil Rights enforces schools’ compliance with 504 plans.	Oklahoma State Department of Education Special Education Services enforces compliance with IDEA.

What Constitutes Discrimination

- There are two forms of discrimination addressed by Section 504:
 - The failure to provide a student with a disability with a “free appropriate public education” (504 FAPE discrimination).
 - The failure to provide a student with a disability an equal opportunity to participate or benefit from non-educational programs and activities (504 non-FAPE discrimination).
- All school personnel share the responsibility to ensure there is no discrimination against individuals with disabilities.

About Section 504

- School districts receive no federal funds to implement this law.
- General education programs and staff have the primary responsibility for the implementation of Section 504.
- Staff from special education may be consulted, but they do not have responsibility for the implementation of the accommodations for the student.
- Section 504 Plans provide reasonable accommodations and modifications.

Considerations for 504 Plan Development

Who Qualifies for a Section 504 Plan?

- To qualify under Section 504, a student must be determined to:
 1. have a physical or mental impairment that substantially limits one or more major life activities (learning is considered a major life activity); or
 2. have a record of such an impairment; or
 3. be regarded as having such an impairment.
- An important consideration in determining eligibility is clarifying the specific problem area that may qualify them for a 504 plan.
- Substantial life functions that, if impaired, might trigger an individual's eligibility include breathing, walking, talking, seeing, hearing, learning, and caring for oneself.

Plan Development

While developing a 504 Plan, the team should discuss the services needed.

- The discussion should focus on the services the student will need, based on the disability, and who will have primary responsibility for implementing the services.
- The Section 504 plan may include accommodations needed to ensure the student's disability is not interfering with learning.
- Those accommodations are the responsibility of the general education teacher, although other school personnel may also have some responsibility.

What Does a Section 504 Plan Contain?

- Section 504 plans are typically only a few pages, depending upon the student's needs. A student with medical needs may have a plan that is considerably longer than a student without medical needs.
- The main components of a Section 504 plan outline the specific aids, services, and accommodations a student is expected to receive and the parties responsible.
- Plans include information, such as:
 - a description of the nature of the impairment;
 - the major life activities substantially limited by the impairment(s);
 - how the disability affects a major life activity(ies);
 - accommodation and/or services based on an area of educational need;
 - those responsible for implementing the plan; and
 - the signatures of those who attended the meeting to develop and whether they approve the plan.

10 Steps for Developing a 504 Plan

10 Steps for Developing a 504 Plan

1. Identify the student

- Section 504 requires districts to annually "undertake to identify and locate every qualified individual with a disability residing in the district's jurisdiction who is not receiving a public education" ([34 CFR 104.32\(a\)](#)).
- Child find activities may include publishing information in student handbooks, local newspapers, or brochures at private schools.

2. Refer the student for an evaluation

- A district must evaluate students "who, because of (disability), need or are believed to need special education or related services" ([34 CFR 104.35 \(a\)](#)).
- A referral may come from a parent, nurse, teacher, or other personnel.
- If the referral is not from the parent, the school district should ensure the parent knows their student has been referred.

10 Steps for Developing a 504 Plan

3. Determine whether a 504 evaluation will be conducted and gain consent

- Although not stated in the statute, the Office for Civil Rights requires districts to obtain parental consent before an initial evaluation of a student.

4. Provide procedural safeguards

- Procedural safeguards must include notice, an opportunity for parents to examine relevant records, a right to a due process hearing, and the right to a review of an adverse hearing decision.

5. Form 504 committee

- The team consists of people knowledgeable about the student. The parent is not a required team member, but it is best practice to include the parent in the student's team. For a student with a medical condition, a school nurse may be included in the team.

10 Steps for Developing a 504 Plan

6. Conduct evaluation

- Teams can gather information from several sources, including aptitude and achievement tests, teacher recommendations, the student's physical condition, social and cultural background, and adaptive behavior.
- An evaluation determines whether a student is eligible, and if eligible, to what extent the student requires accommodations or services and what those should look like.

10 Steps for Developing a 504 Plan

7. Determine eligibility

- To be eligible (three prongs):
 - a student must have a physical or mental impairment that substantially limits one or more major life activities (prong one);
 - a record of such an impairment (prong two);
 - or be regarded as having such an impairment (prong three).
- Students found to be eligible under only prongs two and three do not receive accommodations in a Section 504 Plan but still receive Section 504's antidiscrimination protections.

10 Steps for Developing a 504 Plan

7. Determine eligibility (continued)

- The 504 team cannot consider mitigating measures such as the positive effects of medication, when determining if an impairment substantially limits a major life activity.
- For episodic impairments, such as allergies, consider the impact when the impairment is active.
- Major life activities can include a variety of activities, such as breathing, speaking, learning, concentrating, or walking. They are not limited to this list, and include more than just the major life activity of learning.

10 Steps for Developing a 504 Plan

8. Determine accommodations and write the 504 Plan

- Some students may be eligible under Section 504 but do not need services or accommodations. For instance, a student may be identified as a student with a disability under 504 but does not need accommodations while at school.
- If the same student, needs to sit near the teacher and/or away from distractions, the team should document these accommodations in a 504 plan.
- Using the accommodations guide provided by the OSDE, identify accommodations that will meet the student's individual needs. The accommodations must be designed to provide the student with equal access to a free and appropriate education (FAPE) and extracurricular activities in which the student is otherwise qualified to participate.
- The accommodations listed in the guide are provided as possible accommodations that may be included in a student's 504 plan.
- Accommodations should be determined on an individual basis.

10 Steps for Developing a 504 Plan

9. Provide FAPE

- Under Section 504, schools are required to provide FAPE to all qualified students with disabilities in their jurisdictions, regardless of the nature or severity of those disabilities. [34 CFR 104.33](#) (a).
- Section 504's regulations define FAPE as providing regular or special education students with related aids and services "designed to meet the needs of students with disabilities as adequately as the needs of their nondisabled peers."

10 Steps for Developing a 504 Plan

10. Periodically reevaluate

- Teams are required to periodically reevaluate 504-eligible students, although the regulations don't specify how often to conduct a reevaluation.
- A best practice is to hold an annual 504 meeting and conduct an evaluation at least triennially.
- Reevaluate if there's a change in the student's academic performance, physical or mental health, or need for services.
- Schools must also conduct an evaluation, including a manifestation determination review, before changing the placement of a 504-eligible student for disciplinary reasons.

Evaluation

Evaluation for a 504 Plan

FIRST: Intervention through student study team/MTSS

The need to consider whether the student is disabled under Section 504 may occur when a student displays the following (this list is not inclusive):

- Parent or teacher request based on suspicion of a disability;
- Documentation of physical or mental impairment (e.g., medical diagnosis);
- A known chronic health condition;
- Persistent academic, learning, or behavioral problems;
- Behaviors that result in suspension when appropriate behavior management approaches have been ineffective;
- Failure to demonstrate sufficient improvement with evidence-based interventions that are implemented with fidelity;
- Student is evaluated but not eligible under IDEA (i.e., the student does not meet eligibility criteria or does not need services under IDEA).

Evaluations Under Section 504

- School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA.
- If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at [34 C.F.R. 104.35](#).
- An evaluation under Section 504 is not a full and comprehensive evaluation as is required under IDEA. The evaluation may include, but is not limited to:
 - medical records,
 - school records,
 - standardized test results, and
 - classroom observations.

Evaluation of a Student for a 504 Plan

If formal tests and other evaluation procedures are used, they must meet the following criteria (34 CFR §104.35(b)):

- Validated for the purpose for which they are used and administered by trained personnel.
- Tailored to assess specific areas of educational need (not just an IQ test).
- Accurately reflect aptitude or achievement or whatever the tests purport to measure rather than reflect the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these factors).

Evaluation of a Student for a 504 Plan

The evaluation should provide the team with information about:

- 1) the physical or mental impairment at issue,
 - 2) the major life activity or bodily function impacted by the impairment, and
 - 3) the *degree to which the impairment substantially limits the major life activity (or activities)*.
- Section 504 regulations do not specify the period of time within which an evaluation must be conducted.

How Much Documentation is Required?

- The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires school districts to draw from a variety of sources in the evaluation process so the possibility of error is minimized.
- The source of the information obtained must be documented and all significant factors related to the student's learning process must be considered.
- The sources and factors considered must include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.
- The amount of information required must be determined by the 504 team and must include enough information to make a knowledgeable decision.
- The committee should include persons knowledgeable about the student and the meaning of the evaluation data.

Determining the Need for a 504 Plan

When determining whether a disability exists under Section 504, the team must address three questions.

1. Does the student have a physical or mental impairment?

- The team must specify the physical or mental impairment. Medical diagnoses are often helpful but are not required, nor sufficient for establishing a disability or need for a plan under Section 504. A medical diagnosis or a medication prescription does not alone establish a disability.

2. Does the physical or mental impairment affect one or more major life activities or bodily functions?

- Identify the major life activities or bodily functions impacted by the impairment and how the impairment impacts functioning. Learning does not have to be impacted for a student to be disabled under Section 504.

3. Does the physical or mental impairment substantially limit the major life activity or bodily function impacted by the impairment?

- Using evaluation data, determine the extent to which the impairment limits life activities or functions compared to the accessibility provided to the nondisabled population.

Determining the Need for a 504 Plan

- If the answer to the three questions is **YES**, the student is disabled under Section 504 and will receive the protections of Section 504, including periodic reevaluations, procedural safeguards, and manifestation determinations.
- The team must then address whether the student needs an accommodation plan to be educated as adequately as his/her non-disabled peers.

To determine the need for a 504 plan, the team must answer the following question.

- ***Does the student need Section 504 services for his/her educational needs to be met as adequately as non-disabled peers?***
 - If a plan is needed, the student will receive services that are documented in a Section 504 plan that governs the provision of a Section 504 FAPE.

Does an Impairment Equal Eligibility

- An impairment in and of itself is not a disability.
- The impairment must substantially limit one or more major life activities to be considered a disability under Section 504.”
- The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on an individual basis.
- This does not mean the student must have a severe restriction or inability to perform major life activities.
- The team must consider the condition, manner, and duration of the disability.
- In evaluating a student suspected of having a disability, it is inappropriate to consider presumptions and stereotypes regarding persons with disabilities or classes of such persons.

Mistakes to Avoid: Substantial Limitation

“Substantially limits” is ***not*** defined in the federal regulations. However, in a Dear Colleague letter, the Office for Civil Rights (OCR) clarified that ***“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.”***

When determining whether there is a substantial limitation in a major life activity for purposes of making the disability determination:

1. The ADA regulations provide that the term “substantially limits” should not require an “extensive analysis,”
2. OCR presumes that diagnosed medical conditions are “substantially limiting” impairments, and
3. The ameliorative effects of mitigating measures cannot be considered in making the disability determination, perhaps it is not worthwhile for a 504 team to spend too much time and energy on the question of “substantial limitation.”

Mistakes to Avoid: Substantial Limitation

- In considering “substantial limitations,” a student’s abilities must be measured against their same-age, non-disabled peers in the general population without the benefit of medication or other mitigating measures such as learned behavioral or adaptive neurological modifications, assistive technology, or accommodations.
- Since a “substantial limitation” is “presumed” by OCR when a medical diagnosis has been made and mitigating measures cannot be considered when making the disability determination, teams should assess whether a student with a “presumed disability” needs special services because of that disability. If not, then a 504 plan is not developed, but the student is considered a student with a disability with protections against discrimination based on a disability.

Mistakes to Avoid: Medical Documentation

- A medical diagnosis is not required. However, if a district believes one is necessary as part of the 504 evaluation, the school district is obligated to ensure that the medical evaluation is completed at no cost to the parents or the student.
- If evaluation has been completed and the Section 504 committee has identified an impairment, that impacts a major life activity, but the 504 committee is unsure if the disability is substantially limiting to the student; the team should default in favor of eligibility.

Questions

Elana Grissom, Project Manager

elana.grissom@sde.ok.gov

(405) 522-3246

