

# IEP vs Section 504: Which is Right for My Child?

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UTAH STATE OFFICE OF EDUCATION

SPECIAL EDUCATION AND STUDENT ADVOCACY SERVICES

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## IDEA and Section 504 both have “Child Find” and “FAPE” regulations

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**Child Find:** 34 CFR 104.32 (a), to identify, locate and evaluate children that might have a disability.

**FAPE:** 34 CFR 104.33 (c) *Free education—(1) General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements

	IEP (Individualized Education Program)	504 Plan
<b>Basic Description</b>	Blueprint or plan for a child's special education experience at school.	Blueprint or plan for how a child will have access to learning at school.
<b>What it Does</b>	Provides individualized special education and related services to meet the unique needs of the child.	Provides services and changes to the learning environment to meet the needs of the child as adequately as other students.
<b>What Law Applies</b>	<b>The Individuals with Disabilities Education Act (IDEA)</b> , a federal special education law for children with disabilities.	<b>Section 504 of the Rehabilitation Act of 1973</b> , a federal civil rights law to stop discrimination against people with disabilities.

	IEP (Individualized Education Program)	504 Plan
<b>Who is Eligible?</b>	<ul style="list-style-type: none"> <li>Child must have one or more of the 13 specific disabilities listed in the IDEA.</li> <li>Child's disability must affect the child's educational performance and/or ability to learn and benefit from the general education curriculum.</li> </ul>	<ul style="list-style-type: none"> <li>Child has a disability, i.e., a physical or mental impairment that substantially limits one or more major life activities</li> <li>Disability must interfere with a child's ability to learn in a general education classroom.</li> <li>Section 504 has a broader definition of disability than the IDEA.</li> </ul>
<b>Who Creates the Program/Plan?</b>	Created by an IEP team that includes: parent, general education teacher, special education teacher, school psychologist or specialist who can interpret evaluation results, district representative with authority over special education services (LEA rep.).	Created by a team of people who are familiar with child and understand evaluation data and special services options. Might include parent, general education teacher, school counselor, and the principal or administrator. Team should include nurse if student has an Individual Healthcare Plan (IHP).

	IEP (Individualized Education Program)	504 Plan
<b>What's in the Program/Plan?</b>	<ul style="list-style-type: none"> <li>• Present levels of academic and functional performance (PLAAFP)</li> <li>• Annual education goals</li> <li>• Services (may include special education, related, supplementary, and extended school year)</li> <li>• Timing of services – when they start, how often they occur, how long they last</li> <li>• Accommodations – changes to child's learning environment</li> <li>• Modifications – changes to what child is expected to learn and know</li> <li>• Standardized test participation</li> <li>• How child will be included in general education class and school activities</li> </ul>	<p>There is no standard 504 plan.</p> <p>Generally includes the following:</p> <ul style="list-style-type: none"> <li>• Specific accommodations, supports, or services for child</li> <li>• Names of who will provide each service</li> <li>• Name of person responsible for ensuring the plan is implemented</li> </ul>

	IEP (Individualized Education Program)	504 Plan
<b>How Often is it Reviewed/Revised?</b>	<ul style="list-style-type: none"> <li>• IEP team must review IEP at least once a year.</li> <li>• Student must be reevaluated every three years to determine if services are still needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Review at least annually, sooner if needed.</li> <li>• Student must be reevaluated every three years to determine if they still qualify for a 504 Plan.</li> </ul>
<b>Parent Consent</b>	<ul style="list-style-type: none"> <li>• Parent must consent in writing for school to evaluate/reevaluate a child.</li> <li>• Parents must also consent in writing before school can provide services in IEP.</li> </ul>	<ul style="list-style-type: none"> <li>• Parent's consent required for school district to evaluate a child.</li> </ul>
<b>Parent Notice</b>	<ul style="list-style-type: none"> <li>• School must tell parents in writing before a change in child's services or placement.</li> <li>• Notice also required for any IEP meetings and evaluations.</li> </ul>	<ul style="list-style-type: none"> <li>• School must notify parents about evaluation or "a significant change" in placement. Written consent is considered a best practice.</li> </ul>

	IEP (Individualized Education Program)	504 Plan
<b>How to Resolve Disputes</b>	<ul style="list-style-type: none"> <li>• IEP facilitation</li> <li>• Mediation</li> <li>• Formal state complaint</li> <li>• Due Process Hearing</li> <li>• Civil Lawsuit</li> </ul>	<ul style="list-style-type: none"> <li>• Mediation</li> <li>• File a complaint with regional Office for Civil Rights (OCR) within 180 days of alleged discriminatory act</li> <li>• Due Process Hearing</li> </ul>
<b>Funding/Costs</b>	<ul style="list-style-type: none"> <li>• Students receive these services at no charge.</li> <li>• States receive additional funding for eligible students.</li> </ul>	<ul style="list-style-type: none"> <li>• Students receive these services at no charge.</li> <li>• States do not receive extra funding for eligible students. However, federal government can take funding away from programs (including schools) that do not comply.</li> <li>• IDEA funds cannot be used to serve students with 504 plans.</li> </ul>

## Who is Section 504 available to?

Section 504 is available to students with disabilities **who are not already eligible and receiving special education services under the eligibility requirements of the Individuals with Disabilities Education Act (IDEA).**

## The Following Are Criteria for Identification Under Section 504:

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### 1. Has a mental or physical impairment that substantially limits one or more of such person's major life activities.

"Major life activities" include, but are not limited to:

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|-------------|-----------------|----------------------------------|
| ▪ Walking   | ▪ Lifting       | ▪ Eating                         |
| ▪ Seeing    | ▪ Reading       | ▪ Bending                        |
| ▪ Learning  | ▪ Concentrating | ▪ Operation of a bodily function |
| ▪ Breathing | ▪ Thinking      | ▪ Other                          |
| ▪ Sleeping  | ▪ Communicating |                                  |
| ▪ Standing  | ▪ Helping       |                                  |

## The Following Are Criteria for Identification Under Section 504: (Cont.)

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### 2. Has a record of such an impairment.

### 3. Is regarded as having such an impairment.

**Important:** *The second and third prongs of the definition become a factor if discrimination or negative action has occurred because of the "record" or "history" of being regarded as having an impairment.*

## Notices Required for Section 504

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- General non-description notice
- Annual Child Find/504 duties notification
- Procedural Safeguards
- Notice of and participation in Section 504 meeting
- Notice of Section 504 evaluation and re-evaluation
- Notice of Section 504 evaluation and eligibility decisions
- Notice of Section 504 plan (accommodations, modifications, service placement)
- Notice of termination of Section 504 eligibility or services
- Notice of right to due process.

## Identification/Evaluation

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The regulations, at 34 CFR 104.35(c) tell schools **how to develop 504 accommodation plans**. Three steps are required in interpreting evaluation data and in making placement decisions. A school shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior.
2. Establish procedures to ensure that information obtained from all such sources is documented and carefully considered.
3. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of evaluation data, and the placement options.

## What is the difference between an accommodation and a modification?

**Accommodations** are practices and procedures that level the playing field. They provide equal access during instruction and assessments for students with disabilities.

**Modifications** are alterations to instruction and assessments. Modifications may change, lower, or reduce learning expectations.

**Accommodation vs. Modifications for a Child with a Disability**  
(Individualized Education Program, IEP or Section 504)

	Accommodations	Modifications
Classroom Instruction	Accommodations can help students learn the same material and meet the same expectations as their classmates by leveling the playing field. A student with reading difficulties, for example may listen to an audio recording of a text. It also may be preferential seating.	Modifications to the curriculum may need changes for a student who is far behind their peers. A student who is far behind their peers in reading may have a shorter reading assignment or an easier to read text. Students with modification are not expected to learn the same material as their peers.
Classroom Tests	Testing accommodation can be different from those used during instruction. Such as using a spell checker during a writing test. Although they would not use it during a spelling test, but may have extended time to complete the test. They still would learn all required material and that would be included in the test.	A modification of a test may require a student to demonstrate knowledge of less material or are tested on material that is less complex. In the case of the spelling test a modification may give a student an alternative list that is less complex or may just require the student to master 10 out of a 20 word list.
Standardized Testing	In statewide assessments there are certain accommodations that are allowed. Such as extra time or taking a test on a computer. Ideally these accommodations would have been used throughout the year in the classroom.	Students taking an alternative assessment of their statewide test would include modifications to the regular test. The questions may not test on the same material as the regular assessment. It also may be interrupted differently. When looking at giving an alternative assessment, consider the implications for the student. (possibly not being able to have a regular graduation certificate)
Gym, Music and Art Class	Accommodations in classes like gym, music, and art classes can assist students with disabilities by leveling the playing field. The accommodations can be similar to classroom accommodations. They could include extended time on assignments or completing them in a different format.	If it is determined that attending a class such as gym, music and art is unreasonable for a student, modifications can be made. For example a student may be required to take fewer laps when they need to run, the student may be excused from a final performance in music, or may even be excused from certain classes so they can participate in one-on-one time with a specialist.

Adapted by Student Advocacy Services, Utah State Office of Education, from Accommodations and Modifications: How They're Different, E. Strom, Understood.org, 2014-2016

# Contact Information

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