

(16.9) My child has a disability under Section 504. What is her school’s educational obligation?

Section 504 requires every covered school district or educational agency (district) to provide a free, appropriate public education (FAPE) to every eligible student. [34 C.F.R. Sec. 104.33)(a).] The district must make available educational and related services that are designed to meet the needs of students with disabilities as adequately as the needs of students without disabilities are met. [34 C.F.R. Sec. 104.33(b).] Appropriate education under Section 504 is defined as: “the provision of regular or special education and related aids and services” that:

1. Are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met; and
2. Are carried out in compliance with Section 504 procedures.

[34 C.F.R. Sec. 104.33(b)(2).]

In examining whether a district has met its FAPE obligations under Section 504, the Office for Civil Rights (OCR) looks at three factors:

1. Did District evaluate the student in compliance with Section 504 requirements?
2. Did District determine the student’s needs based on an individual basis:
3. Did District provide aids and services necessary to meet the student’s individual needs. [*Mansfield (AR) Pub. Schs.*, 59 IDELR 265 (OCR 2012).]

School districts cannot evade their duty to provide FAPE under Section 504 by

claiming fundamental alteration or undue burden. [See *Dear Colleagues Letter*, 60 IDELR 167 (OCR 2013).]

A child who is eligible under Section 504/ADA on the basis of having a qualifying impairment resulting in a substantial limitation of a major life activity should be evaluated to determine her needs for aids and services in order to receive FAPE. However, having a record of an impairment or being regarded as having an impairment in themselves do not entitle a student who meets either criteria to FAPE under Section 504/ADA. A student must meet all three components of the Section 504 eligibility criteria to be eligible for protections and services.

One way a district can provide FAPE under Section 504 is by providing an Individualized Educational Program (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA). [34 C.F.R. Sec. 104.33(b)(2).] See Chapter 4 for *Information on IEP Process*. Typically, however, districts use a document commonly known as a 504 Plan to identify a child's disability, report the results of evaluations, determine the aids and services the child requires, and decide on the placement in which she will be educated.