



You Asked!

Q18: The school says my dyslexic student doesn't qualify for special education. My dyslexic student is spending 3x longer to complete homework and study for tests and is earning passing grades. Can my student still qualify for a Section 504 plan and receive services?

A: Possibly. If a student is ineligible for special education and related services under the IDEA, a student may be eligible for "regular or special education and related aids and services" under a federal anti-discrimination law known as Section 504 of the Rehabilitation Act of 1973 (Section 504).¹ Section 504 is designed to reasonably accommodate a student's disability so that her individual educational needs are met as adequately as the needs of nondisabled students. Section 504 applies to all public schools that receive federal financial assistance.²

To be eligible under Section 504, a student must: (1) have a "physical or mental impairment" which substantially limits one or more major life activities (such as learning, reading or writing); (2) have a record of such an impairment; or (3) be regarded as having such an impairment.³ It is important to remember that mitigating measures such as medication and the use of assistive technology cannot be used as a reason to deny a student's eligibility under Section 504.⁴ For this reason, it is important for parents to alert the team in writing to these types of concerns as part of the evaluation process.

The regulations to the Americans with Disabilities Act (ADA), another federal law that prohibits discrimination against and ensures equal opportunity for individuals with disabilities, adopts Section 504's definition of "disability". Furthermore, recent amendments to ADA regulations define a "physical or mental impairment" to include "dyslexia and other specific learning disabilities."⁵

¹ [29 U.S.C. § 794](#); 34 C.F.R. Pt. 104.

² [34 C.F.R. § 104.1](#); [29 U.S.C. § 794 \(b\)\(2\)\(B\)](#)

³ See [34 C.F.R. § 104.3\(j\)](#) for further definition. See also COMMUNITY ALLIANCE FOR SPECIAL EDUCATION AND DISABILITY RIGHTS OF CALIFORNIA, SPECIAL EDUCATION RIGHTS & RESPONSIBILITIES (2011), available at: <http://www.disabilityrightscalifornia.org/pubs/PublicationsSERREnglish.htm>.

⁴ UNITED STATES DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES: REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 (2010), available at: <https://www2.ed.gov/about/offices/list/ocr/504faq.html>.

⁵ [28 C.F.R. § 36.105\(b\)\(2\)](#).

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A student under a Section 504 plan is entitled to a “Free Appropriate Public Education” (FAPE). Appropriate education includes the provision of regular or special education services and related aids and services that are designed to meet the individual education needs of the student as adequately as the needs of students without disabilities are met.⁶ The requirements regarding the provisions of a FAPE, specifically described in Section 504 regulations, are incorporated in the general non-discrimination provisions of the applicable ADA regulation.⁷

Thus, “appropriate education” may include “education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all or portions of the school day.”⁸ Under Section 504, special education may include “specially designed instruction in classrooms, at home, or in private and public institutions, and may be accompanied by related services, such as speech therapy, occupational and physical therapy [etc. that are] ... necessary to the child’s education.”⁹ Section 504 also requires that “appropriate education” must be free and provided at no cost to parents.¹⁰

Further, “[i]f a student with a disability ... is eligible for FAPE under Section 504 but is not receiving FAPE services under the IDEA, that student is entitled to the provision of any services the placement team decides are appropriate to meet their individual educational needs, regardless of cost or administrative burden”, especially if those services had been provided to IDEA-eligible students previously.¹¹ “These services can be as varied and as comprehensive as necessary to meet a student’s need.”¹²

(Source: Disability Rights Education & Defense Fund - www.dredf.org)

⁶ [34 C.F.R. § 104.33\(b\)](#).

⁷ [28 C.F.R. § 35.103\(a\)](#).

⁸ See Footnote 4.

⁹ See Footnote 4.

¹⁰ [34 C.F.R. § 104.33\(c\)](#).

¹¹ UNITED STATES DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, Dear Colleague Letter (July 26, 2016), p. 27, available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>.

¹² See Footnote 11.

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