

**Frequently Asked Questions**

<https://www4.esc13.net/section504/faqs-section504/>

**What is Section 504?**

The Rehabilitation Act of 1973 (Section 504) is a one sentence civil rights law that prohibits agencies that receive federal funding from discriminating against persons with disabilities on the basis of disability. There are also several federal regulations, passed by the DOE, which specifically tell schools how to implement Section 504 requirements.

**What is the Purpose of Section 504?**

Section 504's main emphasis in the schools is equal educational opportunity, which is mainly accomplished by providing appropriate classroom accommodations to eligible disabled students. Section 504 also requires that eligible students are afforded an equal opportunity to participate in school extracurricular and nonacademic activities.

Section 504 is a nondiscrimination statute. The results of the disability must be that the student is unable to achieve equal access or benefit from the school's program and activities as compared to a nondisabled peer. The existence of a physical or mental impairment does not mean that the child automatically qualifies under Section 504.

**Who Is Disabled Under Section 504?**

An eligible Section 504 student is one with

1. **a physical or mental impairment**
2. **that substantially limits learning or another major life activity**

The major life activities that were previously provided as examples were breathing, walking, seeing, hearing, learning, etc. Through the ADA Amendment Act, Congress has provided examples of additional major life activities including major bodily functions (immune system, normal cell growth), as well as sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. The major life activities in Section 504 regulations have always meant to be examples and not an exclusive or exhaustive listing.

Unlike the IDEA, Section 504 does not list a few disabilities (each with strict eligibility criteria) which result in eligibility. Instead, a broad formula is used to include many more disabilities. Specific physical or mental impairments are not listed in the regulations, "because of the difficulty of ensuring the comprehensiveness of any such list."

**Section 504 Three Prong Approach to Eligibility:**

"Handicapped persons" means any person who:

1. Has a physical or mental impairment which substantially limits one or more major life activities
2. Has a record of an impairment
3. Is regarded as having an impairment

The second and third prong cover persons with a history of a disability or persons who are perceived as having a disability. While a “record of" impairment or being "regarded as having" impairment by the recipient give rise to anti-discrimination protection under Section 504, these two prongs do not trigger the school district's obligation to provide a FAPE. Districts have no duty to refer, evaluate, or place students who qualify under prongs two or three. The only duty as to these students is to not discriminate against them on the basis of the history of impairment or the perception that the child is impaired.

**What is meant by the Phrase "Substantial Limitation"?**

The OCR has ruled that the phrase is to be defined by the local educational agency, not OCR. Schools can receive some guidance from the definition in the implementing regulations to the ADA. For Section 504 compliance purposes, Districts are not required to use the definitions provided in the ADA, but may certainly look to them for guidance.

**What is the Americans with Disabilities Act (ADA)?**

The ADA was passed in 1990. Borrowing from the Section 504 definition of disabled person, and using the familiar three-prong approach to eligibility, the ADA applied those standards to most private sector businesses, and sought to eliminate barriers to disabled individuals with regards to access in buildings, transportation, and communication.

**American Disabilities Act:**

A Person is Substantially Limited If He Is: "Unable to perform a major life activity that the average person in the general population can perform," 29 C.F.R. 1630.2(j). (1)(i).; or Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."

**What are the Factors for Determining Substantial Limitation?**

Consider the following questions:

* Is the impairment mild or severe?
* Does the impairment result in failure or the student's not achieving near expected level?
* Does the Impairment Impact on a Major Life Activity? If so, how and for how long?
* Will the impairment be of such short duration as to not cause significant problems?
* Will the impairment cease impacting on the child without intervention?
* Will the impairment be short or long in duration?
* If the impairment is of short duration, will it have a significant impact without intervention?
* If the impairment will be long term, will the impact negatively affect the child's status, academically, socially, emotionally or behaviorally?

The above questions should be considered without regard to the ameliorative effects of mitigating measures such as - medication, medial supplied, equipment or appliances, low-vision devices, (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

**Must a Student under Section 504 have an Accommodation Plan?**

Accommodation plans, however, shall not be developed unless needed, at the time, in order for the student to have his needs met as adequately as those of nondisabled students. If need is established or develops, the Section 504 Committee shall develop an appropriate Accommodation Plan.

**What Is IDEA?**

The Individuals with Disabilities Education Act (IDEA, 20 U.S.C. 1400 et seq.), the federal special education statue, is a voluntary funding statue whereby the states agree to comply with its many requirements in return for specific per-student federal funding. It applies only to about 14% of the student population, since it focuses the money on students with more severe disabilities and needs. IDEA has stricter and more specific requirements than Section 504, which offers more general non-discrimination protections.

**Why is there a Need for IDEA & Section 504 Statutes Addressing Educational Rights of Students with Disabilities?**

IDEA is the funding statute that helps provide resources for the education of the more seriously disabled students. It focuses its resources fairly specifically to a subset of disabled persons. Section 504, however, is a broader, unfunded, nondiscrimination civil rights law emphasizing equal opportunity in any program receiving federal funding. While IDEA students enjoy the extensive IDEA protections and services, they also are entitled to the non-discrimination protection extended by Section 504.

**Is Every Special Education Student Section 504 Eligible?**

The basic nondiscrimination protections of Section 504 technically apply to special education students also. But, IDEA students don't need Section 504 action since their total disability-related educational needs are to be met through the IEP Team process.

**What is the Role of Section 504 in the Public Schools?**

Section 504 is a vehicle through which schools provide necessary accommodations to students with disabilities that are not severe enough to qualify them for special education, but which nevertheless are substantially limiting their learning or other major life activities.

**Is A Student Who Is Dismissed From Special Education Eligible Under Section 504?**

Not automatically. Such a student should be referred to a Section 504 committee for evaluation and a determination of eligibility. It will be up to the committee whether the student in fact qualifies for eligibility under Section 504.

**What Is An "Evaluation" Under Section 504?**

An evaluation under Section 504 is the collecting, gathering, and interpreting of data from a variety of sources about the student's educational functioning. Data can include aptitude and achievement tests, teacher recommendations, physical and health information, adaptive behavior data, discipline information, parent input, privately-obtained data, prior IDEA evaluations, grade and progress reports, and any other relevant information.

**After Evaluation, Could a Section 504 Committee Decide that the Student is So Impaired that He Should Be Referred for an IDEA Evaluation?**

Yes. Either upon initial evaluation, or after attempts to educate the student with a Section 504 plan, the Section 504 committee may refer the student for a special education evaluation.

**Can A Student Be Disabled But Not Qualify Under Section 504?**

Since some disabled students may not be substantially limited in learning or another major life activity by their disability, not all students with disabilities will necessarily be eligible for Section 504 protections. If a student with disabilities is able to function adequately in the school setting, they may not be substantially limited, and thus, not eligible under Section 504.

**What Does Placement Mean in Section 504 Context?**

In the Section 504 context, “placement" simply means the regular education classroom with individually planned modifications. It does not literally mean taking the child out of the regular classroom and putting him someplace else. Students served under Section 504 will most likely not demand high levels of modification or separate classes.

**Does Section 504 Have A Least Restrictive Environment Provision?**

Section 504 regulations state that schools must place disabled students in regular classes unless they demonstrate that education of the student in regular classes with supplementary aids and services cannot be achieved satisfactorily. Another provision states that schools must educate Section 504 students with nondisabled students to the maximum extent appropriate. Thus Section 504 also contains LRE - like provisions.

**Does Section 504 Provide Anti-Discrimination Protection for IDEA and 504 Students?**

Students eligible for Section 504 under any of the 3 prongs (and students served under the IDEA) receive the benefit of anti-discrimination protection. Since Section 504 is a civil rights statute, it concentrates primarily on the notion that disabled persons should not be denied equal opportunity to access and benefit from programs receiving federal financial assistance.

**What Does Section 504 Require of Schools?**

Provision of FAPE to eligible students (meaning evaluating students, considering them for eligibility in the Section 504 committee process, developing individualized accommodation plans, implementing the plans, and engaging in periodic reviews),

Non-discrimination in non-academic and extracurricular programs and activities (the non-FAPE activities), and Compliance with Section 504 procedural requirements (notice, access to relevant records, opportunity for impartial due process hearings, and a review process).

**What is a FAPE under Section 504, As Opposed to FAPE under IDEA?**

Under Section 504, a FAPE is the provision of services, such as accommodations, designed to meet the educational needs of the disabled student as adequately as the needs of nondisabled students are met. In essence, FAPE under Section 504 consists of equal educational opportunity. Under IDEA, a FAPE is the provision of an IEP reasonably calculated to confer meaningful educational benefit to the student - a higher standard than under Section 504.

**FAPE – Free Appropriate Public Education**

No Cost to the Parents, Appropriate Education, in the Least Restrictive Environment

**How Does the Identification of Dyslexia Relate to the Protection of Section 504?**

Texas Legislature singled out dyslexia from other disabilities, which created a special program and procedures for eligibility students. Assessment of a student for dyslexia triggers the protections of Section 504. Dyslexia program eligibility and placement is determined by a committee of knowledgeable people - a properly constituted 504 Committee.

Reference the State Dyslexia Handbook for details on Dyslexia Identification and Program Compliance Issues. State law added additional elements specific for dyslexia. While federal law only requires knowledge of the child, the meaning of the evaluation and the placement options, state law requires a higher level of knowledge with respect to reading and reading disorders when the eligibility of a child on the basis of dyslexia is concerned.

When the 504 committee determines if the student is dyslexic they must also determine if the child should be served under Section 504. Merely having dyslexia does not qualify an individual as 504.

**Does A School Have to Refer A Child to Section 504 Because of a Parent Request?**

No. The Department of Education made it clear that a child must be referred only if the school believes the child might be in need of Section 504 services because of a disability that substantially limits a major life activity.

Section 504 Committees make all necessary decisions regarding a child's identification (eligibility), evaluation, and placement (accommodation plan).

**What Should School Districts Consider When Developing A Section 504 Program from Scratch?**

Have a process in place by which disabled children are identified, evaluated, and placed in accordance with their educational needs so that they have an equal opportunity to benefit from the school’s academic and nonacademic activities.

**What are the Notice Requirements under Section 504?**

There must be continuing steps to notify disabled persons that the school does not discriminate on the basis of disability (by posting of notices, including the notice in school publications and pamphlets, or other written communications). In addition, disabled students and their parents must be notified of the school’s legal duties under Section 504, as well as their rights under the law. Schools must notify disabled students and their parents prior to taking action regarding the identification, evaluation, or placement of a student with a disability (i.e., notice of all Section 504 committee meetings and evaluations).

**A Solid Program Ensures Compliance with the Procedural Safeguards of Section 504 with Respect To:**

* Notice to Parents
* An Opportunity to Examine Relevant Records
* Right to a Due Process Hearing
* Right to a Review of a Due Process Hearing Decision

**Staff Issues for Section 504 Programs:**

Assign a Section 504 Coordinator to oversee the District Section 504 Program:

* Duties will include developing and maintaining a Section 504 program
* Distributing the necessary documents and information to all campuses
* Overseeing the progress of all Section 504 Committees that will be making decision regarding services for disabled children under Section 504
* Handles parent complaints
* Coordinates responses to OCR investigations
* Makes necessary arrangements for Section 504 due process hearings.

Districts Should Provide Training to Ensure that the Section 504 Coordinator and Staff is Knowledgeable and Section 504 Related Issues and Program Compliance:

**Trainings might involve:**

* Conferences and workshops on Section 504
* Bringing consultants into the district to provide in-service presentations designed to meet the district's needs and level of sophistication with respect to Section 504
* In-House District Training provided by the Section 504 Coordinator to other staff by means of campus workshops and in-service presentations.

**What Is Required for a Section 504 Program?**

Stress that Section 504 is an existing federal law that applies to all schools and it is NOT an optional program. Create a set of documents to inform your staff about the requirements of Section 504 and your district? s plan for meeting those requirements.

* Create a set of forms that will consist of the backbone of student documentation for the Section 504 Committees.
* Necessary documents can be adapted from sample forms from other districts. Resist the temptation, to use ready-made forms without modification, since your district's needs may be different than those of other districts. Some districts choose to go beyond the minimum requirements of the law in particular areas and that is the district's individual decision.
* The documents should stress the referral process
* Creation of Section 504 Committee
* Include the District's overall mission and philosophy with respect to Section 504 in the paperwork

**What are the Minimum Documents Needed to Substantiate a Section 504 Program?**

* Internal Referral Form: gathers referral information from parents, teachers, or other staff
* Parental Consent Form: Documents parents' consent to initial evaluation
* Notice of Parent Rights: Informs parents and students of their rights under Section 504, specifically with respect to notice rights, records, and due process
* Report of Evaluation / Meeting: Informs parents of the Section 504 committee's basic decisions (i.e., whether the child qualified for Section 504 services, or whether a referral to another program is being made)
* Individual Accommodation Plan (IAP): for children that qualify for services, the IAP consists of the written plan of accommodations that will be implemented in order for the child to receive an appropriate education under Section 504. For children with behavioral issues, it should also include a behavior management plan.
* Amend your Student Code of Conduct or Discipline Manual: An eligible child’s placement cannot be changed as a result of disciplinary action unless the Section 504 Committee first finds that his behavior was not related to the disability or an inappropriate placement.

**Factors Tending to Indicate a Need for A Section 504 Referral Include:**

* Frequent absences that are disability-related
* Frequent failures
* Frequent disciplinary referrals
* Medical problems
* Possible attentional difficulties
* Past referral to special education (DNQ)
* Students returning from hospitals (especially psychiatric)
* Students for whom informal classroom modifications have not worked

**What is a Section 504 Committee?**

A Section 504 Committee is a group of persons that includes persons knowledgeable about the child, the meaning of the evaluation data, and the placement and accommodation options (i.e., teachers, principals, counselors, Section 504 Coordinator, etc.). This committee interprets the evaluation data, determines eligibility, develops and periodically revises accommodation plans.

**Initiating Committee Action:**

The Section 504 Committee (or the coordinator in anticipation of the committee meeting) collects information necessary to make an educational determination that a child may suffer from a disability that is substantially limiting her in a major life activity.

**What Types of Information will the Committee consider when making a Section 504 Decision?**

* Standardized scores
* report cards
* referral forms
* disciplinary records
* teacher reports and observations
* prior special education testing results
* parent information
* school health records
* counselor's reports
* evaluations privately performed by parents
* checklist and instruments to determine potential attentional problems
* The Committee Determines Eligibility Under Section 504.
* The Committee should state what they think the potential disability is and if they feel it substantially limits a major life activity.

**What are the Parental Rights a District Should adhere to?**

Comply with Section 504 procedural safeguards and be prepared to handle parent complaints to OCR (Office for Civil Rights).

**Procedural Safeguards:**

Procedural safeguards afforded to parents under Section 504 are much less extensive than those under the IDEA. Each District "shall establish and implement, with respect to actions regarding the identification, evaluation or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards" that includes:

* Notice (which includes child find, notice of parent rights, prior notice of evaluations and meetings, and notice of the results/actions taken at 504 Committee meetings)
* Provide consent for initial evaluation
* An opportunity for the parents or guardian of the person to examine relevant records
* Receive notice of Section 504 rights and prior notice of Committee action
* Notice in writing is not legally required but it is recommended. Parental consent for an evaluation under Section 504 is required by the Office of Civil Rights but not mentioned in the Section 504 regulations.
* Regulations do not require that schools invite parents to Section 504 Committee meetings, but some districts are choosing to invite parents as a matter of policy and good parental relations. Parent information can be received outside of the committee process and then be reviewed in actual committee meetings.
* An impartial hearing with an opportunity for participation by the person? s parents or guardian and representation by counsel
* A review procedure

What Is The Role of OCR In Investigating Complaints Under Section 504?

In order for OCR to obtain jurisdiction to investigate your school district -

* A complaint must be filed by an individual asserting that the school district has engaged in discrimination.
* The Individual filing the complaint is not required to file any kind of complaint, appeal or grievance with the school district prior to filing the complaint with the OCR. A complaint is considered complete if it is in writing and signed by the individual filing the complaint.
* It must contain the name and address of the complainant and generally describe or identify the person or group injured by the alleged discrimination as well as identifying the school district which the complainant asserts has engaged in discriminatory conduct.
* This complaint also must describe when the discrimination occurred and some factual basis for the individual’s belief that discrimination occurred in sufficient detail to enable OCR to identify the issues raised under the law.
* Complaints must be filed within 180 days of the last act of discrimination.

**When OCR Investigates a School, Does it Review Educational Decisions?**

Generally, no. Rather, OCR primarily focuses on whether a school maintains and implements the basic Section 504 procedures in reaching its determinations. If so, OCR will not generally second-guess the educational decisions made by school staff.

What if the 504 Committee is Unsure Whether the Child's Problems Arise from Disability or Some Other Cause?

As long as the 504 Committee conducts an appropriate 504 evaluation and attempts to determine whether the student’s problems arise from disability, OCR is satisfied.

**What is A Section 504 Hearing?**

The main procedural safeguard under Section 504 is the parents' right to an impartial due process hearing to contest any action or lack of action of the Section 504 committee. Because the Texas Education Agency (TEA) has not adopted the responsibility for providing due process hearings under Section 504 (as it does under IDEA), local districts must put together their own hearings, and contract their own hearing officers to provide this safeguard. The Section 504 hearing, however, can be less formal and technical than the IDEA due process procedure.

**What Can Happen To A School That Does Not Comply With Section 504?**

Failure to maintain and implement Section 504 policies and procedures can result in complaint investigations, compliance reviews, and enforcement proceedings by the Office for Civil Rights (OCR). Aside from federal agency monitoring, parents can file due process hearing requests and initiate court proceedings.

**Does Section 504 Apply To Colleges and Universities?**

Section 504 applies to post-secondary institutions that receive federal funding. Post-secondary institutions have no duty to identify, evaluate, hold Section 504 committee meetings, or develop accommodation plans. They must, however, provide reasonable accommodations or academic adjustments to Section 504 eligible students.

**Why Should Schools Comply with Section 504?**

Good Section 504 programs can result in reduced numbers of IDEA students and thus, less exposure to IDEA litigation. Generally, if a student's needs can be met through Section 504, they don't need to be in special education. Section 504 can be an intermediate step for students who need disability-related assistance, but for whom a school or a parent is not sure about the need for special education placement.