

Rankin County School District Office of Federal Programs 504 Quick Reference

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

1. What services are available for students with disabilities under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

2. What does noncompliance with Section 504 mean?

A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

3. What sanctions can OCR impose on a school district that is out of compliance?

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

4. Who has ultimate authority to enforce Section 504?

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected 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; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

5. What is a 504 evaluation or reevaluation?

Unlike its special education counterpart, the 504 evaluation does not mean “test,” but instead, means a gathering of data or information from a variety of sources so that the committee can make the required determinations. No formal testing is necessary. Since specific or highly technical eligibility criteria are not part of the 504 regulations, common sources of evaluation data for 504 eligibility are the student’s grades, disciplinary referrals, health information, language surveys, parent information, standardized test scores, teacher comments, etc. An evaluation is required prior to creating a 504 plan and prior to any significant change of placement.

A reevaluation is also required “periodically,” which our District defines as once every school year. The reevaluation is simply a re-gathering of information from a variety of sources to verify eligibility and to determine if revisions are needed in the child’s 504 plan.

6. What is a physical or mental impairment that substantially limits a major life activity?

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

7. What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

8. How are students identified as having a disability?

A parent, teacher, or other member of the school staff may raise a concern about a student's unique need for special help. Parents, teachers, and other staff members will meet to discuss all relevant information about the student. The parents' participation in this meeting is critical and helps to establish an accurate picture of the student's needs. At the meeting, the team will consider whether the student has a disability that substantially limits a major life activity. If the team needs more information, they will request the parent's consent to evaluate the student. If the team determines that the student does have a disability, they will then identify what types of support, or *accommodations*, are appropriate to meet the student's needs. The accommodations will be described in a document referred to as the Section 504 accommodation plan.

9. How much is enough information to document that a student has a disability?

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504

10. Do schools have to formally evaluate students to determine if he/she is eligible for services under Section 504?

Yes. Schools do have to evaluate students before determining their eligibility for services and

before deciding which services are appropriate. As a general rule, Section 504 evaluation procedures are substantially similar to those set out in the IDEA regulations for special education; however, school districts may have a different evaluation process for Section 504 than they have for IDEA.

Section 504 requires that “information from a variety of sources be considered and documented prior to placement (aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior, and observations from parents, teachers, and school personnel).

11. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

12. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

13. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

14. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider

transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

15. What are the referral procedures for Section 504?

All parent, teacher, or administrative initiated referrals to the district's Section 504 Committee must originate at the school the student currently attends. Written requests for Section 504 services shall be made by the school principal or his/her designee and forwarded to the district's Section 504 Coordinator.

16. What is reasonable justification for referring a student for evaluation for services under Section 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

17. What is the role of parents?

Parents are their child's first and most important teachers, as well as their advocates. If a parent believes his or her child has a disability or is having problems in school, the child's teacher should be contacted to discuss these concerns. Building a strong parent/school relationship begins with effective communication. Parents play a key role by providing important information to schools about their child's needs, particularly for students with disabilities. As an added benefit, this involvement demonstrates the importance the parent places on education.

18. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

19. Can a parent demand that 504 provide services rather than IDEA for his/her IDEA-eligible child? No. On occasion, a parent of an IDEA-eligible student may desire all that IDEA has to offer (special education and related services) but demand that the District provide those services under Section 504 so that the child is not in special education. OCR has rejected this demand, finding that when a child qualifies under the IDEA, the District satisfies the provisions of 504 as to that child by developing and implementing an IEP under IDEA. Therefore, when parents reject that IEP developed under IDEA, they would essentially be rejecting what would be offered under Section 504. The parent could not compel the district to develop an IEP under Section 504 as that effectively happened when the school followed IDEA requirements.

20. Can the parent's disability make the child eligible for 504?

No. The student has to have the physical or mental impairment that substantially limits a major life activity.

21. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

22. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

23. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

24. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504

procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period.

25. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

26. What is the role of teachers?

Classroom teachers need to be flexible in their teaching techniques and expectations for students with disabilities. In order for students with disabilities to be successful in school, teachers may need to modify the classroom environment, adjust their teaching strategies, or make other accommodations. In addition to making classroom modifications, other tasks include assessment of student progress and effective communication with parents. Teachers are required under Section 504 to make necessary accommodations as specified in the Section 504 accommodation plan.

27. Can a teacher decide not to implement part of a student's 504 plan because the parent or student believes the accommodation is no longer necessary?

No. A parent or student request to discontinue accommodations should be followed by a 504 committee meeting and revisions to the 504 plan, if appropriate.

28. If school staff members already provide the necessary accommodations for the student with a disability, does the school still have to go through the procedural steps of 504?

Yes. If the student qualifies for 504, doing the accommodations without providing a family with procedural protections is a violation.

29. What is the difference between a regular education intervention plan and a Section 504 plan?

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's

classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

30. What procedural safeguards are provided by Section 504?

Procedural safeguards are rules that tell what procedures schools (and parents) must use in making decisions about services for students with disabilities. School principals should have the procedural safeguards information available for parents upon request. Under Section 504, parents have the right

- to receive notice regarding the identification, evaluation, and placement of their child
- to receive prior notice when the school is changing or discontinuing services for their child
- to review their child's records
- to participate in an impartial hearing and review process with or without representation by counsel.

In addition, school districts must provide public notification of the following:

- policies of nondiscrimination
- grievance procedures
- the contact information for the district coordinator of Section 504 compliance.