

# Section 504/ADA



## Frequently Asked Questions about Section 504

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## **I. SECTION 504**

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute that provides protection from discrimination for individuals with disabilities. Section 504 is enforced by the Office for Civil Rights (OCR) in the Department of Education and does not convey any funding. Section 504 requires that: “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...” (29 U.S.C. Sec. 794). Under Section 504 a qualified individual with a disability means “...any individual who has a physical or mental impairment, which substantially limits one, or more, of such person’s major life activities, has a record of such impairment, or is regarded as having such impairment.”

### **1. 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; genitor-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) and the Americans with Disabilities Amendments Act of 2008 (Amendments Act), include functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, which includes, but is not limited to the operation of following bodily functions: function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive function. This list is not exhaustive or exclusive, and any activity or function not specifically listed can nonetheless be a major life activity.

### **2. Does OCR endorse a single formula or scale that measures substantial limitation?**

No. The determination of substantial limitation is made on a case-by-case basis with respect to each individual student and requires that a group of knowledgeable persons draw upon information from a variety of sources in making its determination. Whatever the degree of limitation, it must be measured as against the average person in the general population. For students this means as measured against his/her grade level peers, but on national versus local norms. See [www.eeoc.gov/policy/docs/902cm.html](http://www.eeoc.gov/policy/docs/902cm.html). The following factors may be useful in making the determination: the nature and severity of the impairment; the duration or expected duration of the impairment; and the permanent or long-term impact or the expected permanent or long-term impact resulting from the impairment.

### **3. What about students who are described as at-risk? Isn't "at risk" another way of describing Section 504-eligible students?**

No. Section 504 applies to physical or mental impairments. For example, students with gifted intelligence who are not working up to their potential, but appear to be performing in the average range, likely are not eligible, at least under the major life activity of learning. Limited English proficiency is not a physical or mental impairment. A lack of educational opportunity is not a physical or mental impairment. Poverty is not a physical or mental impairment. Typical pregnancy is not a physical or mental impairment. Growing up in a dysfunctional family is not a physical or mental impairment. Special assistance may be required for students who present these conditions or live with these hardships, but the

students should not be labeled as disabled under Section 504 since they do not present a physical or mental impairment. See [www.eeoc.gov/policy/docs/psych.html](http://www.eeoc.gov/policy/docs/psych.html).

**4. May the District consider “mitigating measures” used by a student in determining whether the student has a disability under Section 504?**

No. In determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, the School District of Elmbrook must not consider the ameliorating effects of any mitigating measures that student is using. A non-exhaustive list of mitigating measures is as follows: medication; medical supplies; equipment or appliance; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants and other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; auxiliary aids or services; and learned behavioral or adaptive neurological modifications. The one exception is that the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity.

**5. With regard to “mitigating measures,” do the terms “accommodations” and “learned behavioral modifications” include plain old differentiated instruction, which is nothing more than instructional interventions available in regular classes to all students who need them? Would it include Response to Intervention (RtI) procedures, scientifically based interventions for students who are at risk of failing to meet grade level standards?**

For those students who are doing well by virtue of interventions that are regularly made available to any student who needs them in the regular curriculum, but who might struggle without those interventions, school districts should not ignore the use of those supports when determining whether an impairment is substantially limiting. Guidance from OCR suggests that regular education interventions available to all students do not constitute mitigating measures. If RtI interventions work well for a student and it appears as though a student’s learning returns quite quickly to where it ought to be, schools should not be required to ignore the RtI interventions when looking for a substantial limitation. But if RtI is not easily succeeding and the need for interventions that are different from what is regularly available to students in the classroom continues for some time, that long term struggle could indicate a substantial impairment.

**6. How should the School District view a temporary impairment?**

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability will be resolved on a case-by-case basis, taking into consideration the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. An individual is not regarded as an individual with a disability if the impairment is transitory or minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

**7. Is an impairment that is episodic or in remission a disability under Section 504?**

Yes, under certain circumstances. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

**8. Once a student has been identified as eligible for services under Section 504, is that student always entitled to such services?**

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with

the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

**9. Are current illegal users of drugs excluded from protection under Section 504?**

Generally yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who currently is engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

**10. Are current users of alcohol excluded from protection under Section 504?**

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

**II. DISABILITIES UNDER IDEA AND SECTION 504**

Under the Individuals with Disabilities Education Act (IDEA), a student is considered disabled when, by reason of at least one categorical impairment, he or she needs special education services. Wisconsin Chapter 115 provides the legal basis for eligibility criteria specified in DEPARTMENT OF PUBLIC INSTRUCTION, Chapter PI, CHILDREN WITH DISABILITIES, Section 11.36, Areas of Impairment (PI 11.36) and further directs Individualized Education Program (IEP) teams to consider the need for special education whenever a student is found to be categorically eligible through an IEP team evaluation.

In contrast to IDEA's categorical definitions that lead to disability determination, Section 504 provides a functional definition of disability. Disability under Section 504 means " ...any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities...."

**11. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitation Services (OSERS) and the State Department of Public Instruction (DPI) regarding educational services to students with disabilities?**

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, program, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504.

Section 504 prohibits discrimination on the basis of disability in program or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the recipient of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.



**12. What evaluation procedure does the School District of Elmbrook use when a student is suspected of having a disability under Section 504?**

Because the procedural requirements for referral and evaluation under IDEA are more comprehensive than those described under Section 504, the School District of Elmbrook will use the IDEA evaluation procedures when a student is suspected of having a disability, and will consider a student's eligibility under both laws whenever an evaluation is conducted. Though stated differently, the disability definitions provided by these two statutes converge upon the same population of school age children whose educational needs can be identified using the referral and evaluation process established by IDEA.

**13. Does Section 504 require action similar to IEP meetings?**

Placement decisions must be made by a "group of persons." While IDEA defines the IEP team and specifically includes the parent as a participant, Section 504 does not define the group other than to say that participants must be "knowledgeable about the child, the meaning of evaluation data, and the placement options." The characteristics of an IEP team under IDEA meet these requirements.

**14. Many students who meet the definition of disability under Section 504 also will be eligible for special education under IDEA. What is the School District's legal responsibility for these students?**

If the student is eligible for special education under IDEA, the District will offer to provide the student with an Individualized Education Program (IEP) and free appropriate public education (FAPE).

**15. If a student is eligible under both IDEA and Section 504, can the school just comply with IDEA and thereby fulfill its duty?**

Yes. The Section 504 regulations say "Implementation of an IEP developed in accordance with IDEA is one means of meeting the standard required by 504" 34 C.F.R.103.33 (b)(2).

**16. If a student is found eligible under IDEA, is there a requirement to go on to address Section 504?**

No. As stated above, implementation of an IEP developed in accordance with IDEA is one means of meeting the standards required by Section 504.

**17. 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/her ability to learn or another major life activity and, if so, make an individualized determination of the student's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustment in the regular classroom.

**18. What are the District's responsibilities for students who are eligible under 504 but not IDEA?**

For those student determined to meet Section 504 only, the school's general duty is similar to its duty under IDEA. The school must evaluate the student's condition, design a plan to accommodate the disability, if a plan is needed, place the student in the least restrictive environment and provide procedural safeguards.

**19. What if parents want special services for their child but request a Section 504 plan rather than have the child identified as disabled under IDEA?**

The School District must fulfill its responsibility under IDEA. When school officials believe a student is eligible for special education, IDEA requires the school to refer the student and seek consent for an evaluation. If the parent refuses

consent for the evaluation, the school can seek mediation or a due process hearing in order to complete an evaluation. The Office for Civil Rights addressed this issue in 1996 by stating that for students considered disabled under both IDEA and Section 504, the requirements of Section 504 are through the implementation of an IEP under IDEA. If a parent rejects services developed under the IDEA, the parent is rejecting what would be offered under Section 504. The parent could not compel the District to develop an IEP under Section 504 instead, as that already happened when the school followed IDEA requirement. Therefore, if the school believes a student to be IDEA eligible the school should identify the student as such.

**20. What if a parent refuses consent for placement in special education after IDEA eligibility has been determined by the IEP team?**

Parental consent for initial evaluation does not mean that they also have given their consent for the School District to start providing special education and related services to the student. Parents may deny and/or revoke consent for their child to receive special education and related services at any time. If parents revoke consent, the School District will provide a written notice explaining when it will stop providing special education and related services to the student. Once special education and related services end, the School District:

1. is not required to make a free and appropriate public education (FAPE) available to the student;
  - Is not required to have an individualized education program (IEP) meeting or develop an IEP for the student;
  - Is not required to evaluate the student for eligibility under Section 504 or develop a Section 504 Plan for the student;
2. is not required to offer the student the discipline protections under IDEA; and
3. is not required to amend the student's educational records to remove any reference to the student's special education history.

**21. Who should serve as case manager when an IEP determines that a student is not eligible for special education services under IDEA but determines that a 504 plan is necessary to address the student's educational needs as a student with a disability under Section 504? Who writes the 504 plan?**

Following an initial evaluation, if the IEP team recommends a Section 504 plan, the IEP team's case manager maintains responsibility for the process through completion under the direction of the Local Education Agency representative (LEA). The case manager may be the building school psychologist or school social worker.

**III. EVALUATION AND REVIEW PROCEDURES**

At the elementary and secondary school levels, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. The School District of Elmbrook uses the evaluation process under IDEA, which meets the Section 504 standard requiring the use of evaluation procedures that ensure students are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

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

School districts may always use regular 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.

**23. What constitutes a Section 504 evaluation?**

In the School District of Elmbrook, it is required that any child suspected of having a disability under Section 504 be evaluated using the current procedures specified under IDEA and as represented in Chapter 115 of Wisconsin Statutes. The Section 504 regulations state that a Section 504 evaluation must include information from a variety of sources including that relating to aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The evaluation data must be “documented and carefully considered” and that the “placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options” 34 C.F.R. S104.35. These evaluation requirements are met through the use of IDEA evaluation procedures.

**24. 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 team gathered to evaluate the student. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made satisfactory under Section 504 and shall be utilized by the School District of Elmbrook (SDE). SDE will draw from a variety of sources in the evaluation process and may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. The information obtained from all such sources must be documented and all significant factors related to the student’s learning process must be considered.

**25. Are there any impairments which automatically mean that a student has a disability under Section 504?**

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

**26. 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 resources in evaluation 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.

**27. 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.

**28. What if the team cannot come to an agreement regarding eligibility, placement or programming?**

Team decisions will be made by consensus. It is not appropriate to make eligibility, placement, or programming decisions based on a majority “vote.” In the absence of a consensus, the Section 504 Coordinator or designee at the meeting will make the final decision regarding a student’s eligibility and, if needed, the placement accommodations and related aids and/or services that the student needs to access school programming, subject to any due process that the parents/guardians may choose to access.

**29. A student is receiving services that the School District of Elmbrook 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 of Elmbrook 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.

**30. Under Section 504, does the District have an obligation, upon parent request, to provide an Independent Educational Evaluation (IEE) at District expense as it does under IDEA?**

There are no provisions for IEEs under Section 504. Therefore, parents are not entitled to an IEE if the request is focused narrowly on the appropriateness of a Section 504 Plan. However, because IDEA evaluation procedures are used to determine Section 504 eligibility, parents are entitled to an IEE as defined by the IDEA procedural safeguards if they question the IEP team's evaluation procedures, findings, or eligibility determination. If a parent's disagreement with a Section 504 Plan is related to these procedures or finding, the District may have an obligation to provide an IEE under IDEA, upon parental request.

**31. When must a Section 504-only student be evaluated?**

The Section 504 regulations provide that an evaluation must be conducted prior to initial accommodations/placement under Section 504, and prior to any "subsequent significant change of placement." Three years is the standard for reevaluations under IDEA and is the same standard applied to Section 504-only students by the School District of Elmbrook.

**32. Who should serve as the Section 504 case managers when the Section 504 annual review procedures are being followed?**

The building Section 504 coordinator(s) determine(s) who is responsible for serving as Section 504 case managers when Section 504 review procedures are being followed. In the School District of Elmbrook the case manager is the guidance counselor, school psychologist, or school social worker.

**33. Should students be invited to Section 504 annual review meetings?**

Section 504 does not address student participation in team meetings. However IDEA does state that, whenever appropriate the student should be considered a team participant. It is recommended that students participate in IEP team meetings and Section 504 annual reviews whenever appropriate. This determination is a team responsibility and should be made in consultation with the student's parents.

**34. Is there a transition requirement under Section 504?**

No. There is a transition requirement under IDEA but not under Section 504. If transition services are needed to promote a student's success in school, and would otherwise be jeopardized by his/her disability, then these services should be included in the student's Section 504 Plan. It also is advised that a transition conference be held for all students with disabilities prior to their high school graduation, not just those considered disabled under IDEA. Students who are considered to have a disability under Section 504 only, need documentation of their disability and the strategies and services that have been provided to them while in high school. It also is advised that graduation/transitioning students be made aware that they may be eligible for protections under Section 504 and the ADA.

**35. Does Section 504 have anything to do with extracurricular activities?**

Yes. The 504 regulations require that nonacademic and extracurricular services must be provided in such manner as is necessary to afford students with disabilities “an equal opportunity for participation in such services and activities.” Section 504 also covers IDEA-eligible students in this regard. Any student with a disability is entitled to an equal opportunity to participate and accommodation while participating in extracurricular activities. “Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to disabled persons, and employment of students, including both employment by the recipient (SDE) and assistance in making available outside employment” 34 C.F.R. s 104.37(a)(2).

**36. What if a student’s participation poses a significant risk of harm, even with accommodations?**

When there is no accommodation that will reduce the risk of harm, the student may be excluded from participation. Caution is advised when determining whether a substantial risk of injury exists.

**IV. PLACEMENT**

Once a student is identified as being eligible for regular or special education and/or related aids or services, a decision must be made regarding the type of services the student needs.

**37. Must the 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).

**38. Are there circumstances where a student may found to have a disability (i.e. have a physical or mental impairment that substantially limits a major life activity) but does not require accommodations?**

Yes, under certain circumstances. For example, the School District may not consider the ameliorating effects of mitigating measures (such as medication for ADHD or an inhaler for asthma) when determining whether a student has an impairment that substantially limits a major life activity. But if the impairment is well controlled by virtue of some mitigating measure, the student may not need any accommodations and supports in a 504 plan, even though the student is considered disabled under the law. Similarly, a student whose impairment is episodic or in remission but is considered a disability if it would substantially limit a major life activity when active, also may not need accommodations and supports of a 504 plan while the impairment is dormant.

**39. What is the 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 from another school district with a Section 504 plan, the School District of Elmbrook will review the plan and supporting documentation. If a group of persons in the 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 will implement the plan. If the District determines that the plan is inappropriate, the District will 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.

**40. What are the responsibilities of regular education teachers with respect to implementation of Section 504 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. Failure to implement the plans can cause the School District to be in noncompliance with Section 504.

**41. 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 face challenges in school.

**42. Can the District attempt to address a child's difficulties through school-based interventions prior to conducting an evaluation?**

The District has the option of addressing academic and behavioral difficulties through documented school-based interventions and/or modifications, prior to conducting an evaluation. If such interventions and/or modifications are successful, a District is not obligated to subsequently evaluate a student for special education or related services.

## **V. DISCIPLINE**

**43. What does Section 504 require regarding discipline?**

A school district has procedures to ensure that students are not discriminated against on the basis of disability. Discipline of students under Section 504 is very similar to discipline of the IDEA eligible student. The Section 504 team must approve any long-term change of placement (over ten cumulative days). Student should not be punished for behavior that arises from the disability – thus a manifestation determination is necessary. There is one significant difference in discipline of students under Section 504 as opposed to students under IDEA. If the student is a Section 504-only student, and the student is charged with a violation of school rules concerning drugs or alcohol, the school can take disciplinary action just as if the student were not identified under Section 504. Section 504 states, "For purpose of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore the due process procedures at 34 C.F.R. 104.36 shall not apply to such disciplinary action." 20 U.S.C. 706(8)(C)(iv)

**44. If a student who has a disability only under Section 504 is expelled, is that student still entitled to FAPE?**

There is no requirement in Section 504 for the continuation of FAPE following expulsion of the student. However, it may be the District's decision to do so, even in the absence of such a requirement.

**45. When is suspension or expulsion considered a change in placement?**

Under Section 504, OCR considers that a change in placement occurs if:

- (a) the expulsion or suspension of a student with a disability exceeds ten consecutive school days (in-school discipline is regarded as suspension if it removes the student from his/her educational program), or
- (b) a student is subjected to a series of removals that constitute a pattern because they accumulate to more than ten school days in a school year. Such a significant change in placement necessitates a reevaluation of the student.

The reevaluation of the student includes a determination of whether the student's misconduct is caused by his/her disability.

Occasional detentions and similar forms of discipline do not require reevaluation or determination of the cause of the misconduct under Section 504. Generally, detentions would not constitute a significant change in placement, particularly if they occur before or after instructional hours. If a pattern of disciplinary actions for behaviors caused by or symptomatic of the student's disability develops, there might be sufficient cause to believe that a Section 504 violation is occurring.

**46. When is disciplinary action not considered discriminatory under Section 504?**

Court rulings suggest that disciplinary actions are not considered discriminatory when they occur prior to the determination that a student has a disability. Therefore, a District is not required to determine if behavior being sanctioned is a manifestation of a disability if the student is not believed to be a student with a disability.

Under Section 504, school districts are required to conduct an evaluation of any student who is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement. Therefore, if a student is suspected of being a student with a disability and is being considered for disciplinary action, the student must be evaluated to determine if the behavior that is being considered for sanction is a manifestation of a disability.

**VI. PROCEDURAL SAFEGUARDS and DUE PROCESS**

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need accommodations, special education, and/or related aids and services. Parents must be told about these procedures. In addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records. The due process procedures must allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions.

If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for their participation and for representation by counsel. A review procedure also must be available to parents or guardians who disagree with the hearing decision.

**47. What procedural safeguards are required under Section 504?**

Under the Section 504 regulations, parents are expressly entitled to notice of certain actions, an opportunity to review relevant records, access to a complaint process, and an opportunity for an impartial hearing that permits parent participation, representation by counsel and review procedure. Under Section 504, notice should be sent at the same times the District would send notice in a special education matter, such as prior to an evaluation or reevaluation, prior to a change in placement, and whenever the District has refused to conduct a requested evaluation, or made a requested change in placement.

**48. During evaluation and review procedures, do the procedural safeguards under Section 504 take the place of those granted to parents and students under IDEA?**

Procedural safeguards under IDEA and Section 504, though not exactly the same, are comparable. Compliance with the requirements under Section 504 can be accomplished through compliance with the more specific IDEA procedural safeguards. Because IDEA evaluation procedures are used in all cases where a disability is suspected or already is identified, procedural safeguards granted to parents and students under IDEA are in effect when students undergo an initial evaluation or reevaluation. If an IEP team determines that a student does not have a disability under IDEA, completes the evaluation process documenting this, and subsequently determines that the student has a disability under Section 504, the procedural rights under Section 504 become effective. To signify this, a copy of these procedural safeguards is provided with the parent invitation to the Section 504 team meeting at which the student's Section 504

Plan will be developed. While this meeting may be a part of the IEP team meeting addressing eligibility, the point at which the Section 504 Plan is being developed marks the transition from the IDEA process to the less defined procedures required under Section 504.

**49. Must the School District obtain parental consent prior to conducting an initial evaluation?**

Yes. OCR has interpreted Section 504 to require school districts to obtain parental permission for initial evaluations. If the School District suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

**50. What can the School District do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?**

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, the School District will consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

**51. What are parents' and students' due process rights under Section 504?**

In the event of a disagreement between the parent/guardian and the School District in regard to the identification, evaluation, procedural guidelines, or educational placement of a student under Section 504, the parent/guardian have the right to file a District complaint, request an impartial hearing, or file a complaint with the Office for Civil Rights.

**52. What does the complaint process look like?**

When a parent/guardian or adult student believes the Section 504 team did not follow Section 504 procedural guidelines in the evaluation process, he/she may: Contact the school administrator or designee with the complaint. The school administrator may pursue an informal resolution of the complaint with the agreement of the parties involved, complete the *Section 504 Complaint Form* and present it to the school administrator or designee for review. With a resolution due within 10 school attendance days, the school administrator or designee will interview the complainant. A resolution shall be made in writing to the complainant; if the complainant is dissatisfied with the resolution, an appeal may be made in writing to the Superintendent/designee within 10 school attendance days after receiving notice of the resolution. With a resolution due within 10 school attendance days, the Superintendent or designee will review the complaint and resolution and may conduct further investigation if deemed appropriate. The Superintendent's or designee's decision shall be made in writing to the complainant.

**53. What does the impartial hearing process look like?**

When a parent/guardian or adult student believes the Section 504 team did not follow Section 504 procedural guidelines in the evaluation process, he/she may request a hearing conducted by an impartial hearing officer from outside the School District. Parent/guardian may contact Rae McClain to obtain an impartial hearing officer. The District will choose an impartial hearing officer and will work with the parent/guardian to schedule a hearing date. The parent and student may take part in the hearing and have an attorney represent them at their own cost. Questions regarding how to request a hearing under this section should be directed to the District Section 504 Coordinator: **Dr. Rae McClain, School Psychologist, (262)785-3970.**

**54. How does a parent file a complaint with the federal Office for Civil Rights?**

Anyone who believes that an education institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability or age, may file a complaint with OCR at:



**Chicago Office**

U.S. Department of Education  
Citigroup Center  
500 W. Madison Street,  
Suite 1475  
Chicago, IL 60661-4544  
Telephone: (312) 730-1560  
Facsimile: (312) 730-1576  
Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

**55. Is there a medication requirement under Section 504?**

No.

**56. If there is a complaint to OCR regarding team findings, will OCR review the eligibility determination made by the team participants?**

In a 1997 statement OCR noted “...except in extraordinary circumstances, it is not the intention of OCR to review the results of individual placement and other educational decisions, so long as the process requirements of the Section 504 regulations have been followed.”

**57. Can the School District insist that parents/guardians use the District complaint process before filing a complaint with the Office for Civil Rights?**

No. The School District cannot insist that parents/guardians use the District complaint process before utilizing other due process procedures. Parents/guardians may utilize any of the due process procedures they deem appropriate to their needs.