

Frequently Asked Questions about Section 504 Plans

What criteria are used to determine whether a student is eligible for a Section 504 Plan?

A student shall be eligible for a Section 504 Plan if they satisfy all of the following criteria:

(1) Physical or Mental Impairment

A student must actually have a mental or physical impairment. A physical or mental impairment means: 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, and specific learning disabilities.

(2) Substantially Limits

The student's physical or mental impairment must substantially limit one or more major life activities to be eligible to receive FAPE under 504. Section 504 does not specifically define the term "substantially limits." It is subject to interpretation on a case-by-case basis. Nevertheless, an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: medication, medical supplies, 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. Thus, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(3) Major Life Activities

Major life activities include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Learning, reading, concentration, thinking, and communication

are typically, but not always, the major life activities utilized to determine Section 504 eligibility in the schools.

How is a Section 504 Plan referral made?

When a student is exhibiting academic, attendance, social and/or behavioral problems the student's school will convene a Student Success Team ("SST") meeting. The purpose of the SST is to investigate the needs of the student. This preliminary investigation should result in a disposition including one of three things: regular education interventions that meet the student's needs, a referral to review Section 504 Plan eligibility, and/or a referral for a special education evaluation pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"). If it is determined that the student be referred for a Section 504 Plan Eligibility Review, then a Section 504 Plan Referral Form should be submitted to the school's Section 504 Site Chairperson.

A parent, guardian, teacher, counselor, related service provider, other school staff, and/or community agency may also directly initiate a Section 504 Plan referral without going through the SST process. The individual making the referral should complete the Section 504 Plan Student Referral Form and forward it to the Section 504 Site Chairperson.

What is the Section 504 Plan evaluation process?

The District shall evaluate a student who is suspected of having physical or mental impairment that substantially limits one or more major life's functions and may require accommodations or modifications to the educational program. The evaluation shall occur before taking any action with respect to the initial placement or a change of placement of the student.

When selecting tests and other evaluation materials, the District will ensure that they are: validated for the specific purpose for which they are used; administered by trained personnel in conformance with the instructions provided by their producer; tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

The District may administer and use formal and informal measures as deemed necessary. If the team is going to conduct formal assessment and/or observations in order to determine eligibility, then the team must obtain informed and written consent from the parent/guardian before the student is evaluated.

Once the evaluations are completed, the District will schedule a Section 504 team meeting to review the evaluations and the student's Section 504 team will determine whether the student is eligible for an accommodation plan under Section 504.

What is the process for reviewing Section 504 Plan eligibility?

At the initial Section 504 team meeting, the team will decide whether the student is eligible for a FAPE under Section 504 by deciding whether the student has a physical or mental impairment that substantially limits one or more major life activities. If the team determines that the student is eligible to receive a FAPE under Section 504, the team will develop a Section 504 Plan. (34 CFR 104.33)

The Section 504 team shall consist of individuals knowledgeable about the student, the meaning of the evaluation data being reviewed, and placement options. The team may include at least one of the student's general education teachers, other teachers, the student and individuals who can interpret the instructional implications of the assessment results. The parents shall be invited to Section 504 Accommodation Plan team meeting. The parents are not required members of the team however, they are knowledgeable about student.

The Section 504 team, in deciding whether a student is eligible for a Section 504 Accommodation Plan, will collect and carefully interpret evaluation data and in a making placement decision, the team will draw upon information from a variety of sources, including, but not limited to, observations, testing, reports, District evaluations, medical records, letters from doctors, health care plans, school records, school administration, school counselors, teachers and paraprofessionals that work with the student, the parent, and when appropriate, the student.

How often should a Section 504 Plan be reviewed?

The Section 504 Plan should be reviewed on an annual basis, at which time the parent/guardian should receive a copy of the District's notice of parent/guardian rights and procedural safeguards. Further, a re-evaluation of the student should occur at least every three years, or before any significant change in placement, including exiting the student from a Section 504 Plan.

Are there situations when it is inappropriate to offer a Section 504 Plan?

Evaluating the student and determining if the student has a physical or mental impairment that substantially limits one or more major life activities determines eligibility for a Section 504 Plan. If the student does not exhibit a physical or mental impairment that substantially limits one or more major life's functions then a Section 504 A Plan will not be developed for the student. (Keep in mind that while a Section 504 Plan might not be appropriate, other kinds of accommodation plans e.g. SST plan may be appropriate.) Some common misuses of a Section 504 Plan are outlined below:

- A parent/guardian and/or doctor presents the school with a disability diagnosis and a Section 504 Plan is written without first determining if the disability causes substantial limitation of a major life activity.

- A student is placed on a Section 504 Plan because the student has a record of impairment or is regarded as being impaired, but the student does not actually have a disability that substantially limits a major life activity.
- A student fails to qualify for special education and related services under the IDEA, but is automatically provided with a Section 504 Plan.
- A student is automatically placed on a Section 504 Plan when the student no longer qualifies for special education services under the IDEA without first qualifying based on Section 504 criteria.

Are there any special rules regarding discipline and students with Section 504 Plans?

In disciplinary situations, students who have a Section 504 Plan may be suspended or placed in an alternative interim setting to the same extent these options would be used for children without disabilities. School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days. Additionally, removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct may be made.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal, child is entitled to a manifestation determination meeting within ten (10) school days of the District's decision to change the student's placement. The child's parent/guardian must be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine (based upon a review of all relevant information in the student's cumulative and Section 504 Plan files, the student's Section 504 Plan, any teacher observations, and any relevant information provided by the parent/guardian) whether the student's alleged behavior was a manifestation of his/her disability by answering the inquiry required by the IDEA.

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or,
- Whether the conduct in question was the direct result of District's failure to implement the student's current Section 504 Plan.

If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of the student's disability. However, if the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of the student's disability and the District may take disciplinary action against the student, such as expulsion, in the same manner as it would with a child without disabilities. If the

student's behavior is determined to be a manifestation of his or her disability, the District must conduct a functional behavior assessment, and implement a behavioral support plan for the student. In this situation, if a behavioral support plan has already been developed, the District will review the plan and modify it as necessary to address the behavior in question. However, regardless of

whether a student's behavior was a manifestation of the student's disability, the District may determine, following assessment, that a change of placement is appropriate for the student. **The District may proceed with this change of placement following notice to the parents; consent is not required for a change of placement pursuant to Section 504.**