

Section 504 Frequently Asked Questions

What is “discrimination” under Section 504?

Discrimination occurs when a district, based on disability:

- denies a disabled student the opportunity to participate in or benefit from an aid, benefit, or service which is afforded to non-disabled students (e.g., denies credit to a student whose absenteeism is related to his disability, expels a student for behavior related to his disability, fails to dispense medication, or provide an individual health plan or nursing care plan to a disabled student who cannot attend school without such services);
- fails to afford a disabled student an opportunity to participate in or benefit from an aid, benefit, or service that is equal to that afforded to non-disabled students (e.g., conditions a disabled student’s participation in a field trip on the student’s parent or guardian attending the trip, refuses to allow an otherwise qualified disabled student to try out for an interscholastic athletic team);
- fails to provide aids, benefits, or services to a disabled student that are as effective as those provided to non-disabled students (e.g., fails to provide a disabled student necessary environmental, instructional or behavioral accommodations or another related aid or service, fails to provide a disabled student necessary study skills instruction or another special education service);
- provides different or separate aids, benefits or services than are provided to non-disabled students unless there is a legitimate, nondiscriminatory reason for doing so (e.g. requires all disabled students to use special education transportation, segregates all disabled students in portable classrooms, requires all disabled students to use a different recess period);
- denies a disabled student the opportunity to participate in programs or activities that are not separate or different unless there is a legitimate and nondiscriminatory reason for doing so (e.g., denies all disabled students the opportunity to eat meals in the school cafeteria, prohibits all disabled students from participating in full day kindergarten, refuses to allow any disabled students to enroll in regular physical education classes);
- denies a disabled student the opportunity to participate as a member of a planning or advisory board (e.g., denies disabled students the opportunity to participate in student government);
- otherwise limits a disabled student in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., denies all disabled students admission under school choice);
- aids or perpetuates discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability (e.g., sponsors a non-district organization that excludes disabled students); and
- selects the site or location of a facility that has the effect of excluding disabled students from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity (e.g., selects an inaccessible facility in which to hold school plays, concerts, or athletic competitions).

What is a “legitimate and nondiscriminatory” reason to treat a student differently, based on disability, under Section 504?

Treating a student differently, based on disability, is “legitimate and nondiscriminatory” under Section 504 if doing so is: (1) based on a legally sufficient reason (e.g., doing so is educationally justified); and (2) supported by the facts (e.g., based on the student’s education records and other information). For example, it is legitimate and nondiscriminatory to deny a disabled student enrollment in a general education class, based on the student’s disability, if: (1) even with the provision of related aids and services, the student would be unable to participate in or benefit from the class; and (2) the student’s education records and other information support the reason.

When does an impairment “substantially limit” a student’s major life activity?

Though Section 504 does not define the term “substantially limit,” the term should be interpreted to mean an important and material limitation. For example:

- a student with a diagnosed learning disability whose academic performance is within the norm for his age/grade is not substantially limited in the major life activity of learning;
- a student with ADHD who is not removed from school for disciplinary reasons more than 10 school days in a school year is not substantially limited in the major life activity of behavior;
- a student with a food allergy who is not in danger of having an anaphylactic reaction during the school day is not substantially limited in the major life activity of breathing; and
- a student with a hearing impairment who has sufficient residual hearing to participate in and benefit from school without related aids or services is not substantially limited in the major life activity of hearing.

Is a district required to provide FAPE to a student who “has a record of disability” or is “regarded as disabled?”

No. A district is required to provide FAPE to those students who have a physical or mental impairment that currently substantially limits a major life activity. The fact that a student “has a record of disability” or is “regarded as disabled” does not trigger a district’s duty to provide FAPE. A district’s duty to a student who “has a record of a disability” or is “regarded as disabled” is to protect the student from discrimination (e.g., it would be discriminatory for a district to prohibit a student who has a record of drug addiction, but is not currently engaging in the illegal use of drugs, from participating in an interscholastic athletic team, based on the student’s “record of disability”).

What are “related aids and services” under Section 504?

“Related aids and services” means any service that a disabled student needs to participate in or benefit from a district’s education program (e.g., if, without a specific service, a disabled student wouldn’t be able to attend school, achieve passing grades, advance from grade to grade, etc., the service in question is a necessary related service for the student). In contrast to IDEA, under which students are eligible to receive related services if and only if they need related services to benefit

from special education, students are eligible to receive related aids or services under Section 504 even if they are not provided any special education. Related aids and services include but are not limited to:

- school health services
- counseling services
- environmental, instructional, and behavioral accommodations
- transportation services
- speech-language services
- audiology services
- physical and occupational therapy services
- orientation and mobility services
- provision of a modified schedule, grading system, or curriculum

What is a “significant change in placement” under Section 504?

A “significant change in placement” means a significant change in the type or amount of educational or related aids or services that a district provides to a disabled student. For example:

- initiating or terminating a service
- significantly increasing or decreasing the amount of a service
- disciplinary actions that exclude a student from school for more than 10 consecutive school days in a school year
- disciplinary actions that create a pattern of exclusion from school (e.g., cumulative short-term suspensions that are each 10 school days or fewer in duration that create a pattern of exclusion due to the length of each suspension, the proximity in time of the suspensions, the total amount of time the student was excluded from school, and the similarities of the behaviors that led to the suspensions)

Can a temporary health condition be a disability under Section 504?

Maybe. A student with a temporary health condition whose condition is so severe that it substantially limits one or more of the student’s major life activities for an extended period of time may qualify as a disabled student under Section 504. For example, though pregnancy is not generally considered a disability under Section 504, a district may determine that a pregnant student, who cannot attend school for several months due to pregnancy-related complications, is disabled under Section 504.

Can drug addiction be a disability under Section 504?

Maybe. A student who is drug addicted but is in recovery and is not currently engaging in the illegal use of drugs, may qualify as a disabled student under Section 504 if the student’s drug addiction

substantially limits the student's ability to perform a major life activity (e.g., to learn or attend school). Such a student may need a modified schedule, school counseling, or another type of special education or related aid or service to participate in or benefit from the district's education program. A student who is drug addicted and is currently engaging in the illegal use of drugs, however, is excluded from the definition of a disabled student under Section 504. A district is under no obligation to evaluate such a student under Section 504 regardless of the educational impact the drug addiction is having on the student. A district may treat such a student in the same manner as it treats non-disabled students.

Can alcoholism be a disability under Section 504?

Yes. A student who is addicted to alcohol, regardless of whether the student is currently using alcohol or is in recovery, may qualify as a disabled student under Section 504 if the student's alcoholism is substantially limiting the student's ability to perform a major life activity (e.g., to learn or attend school). Such a student may need a modified schedule, school counseling, or another type of special education or related aid or service to participate in or benefit from the district's education program.

Does Section 504 protect a disabled student who engages in drug or alcohol related misconduct at school?

No. A district may discipline a disabled student for the illegal use or possession of drugs or alcohol at school or at a school-sponsored function in the same manner and to the same extent as it disciplines non-disabled students. The procedures at 34 CFR 104.35 (regarding manifestation determinations) and 104.36 (regarding procedural safeguards) are not required for such disciplinary actions. The parent or guardian of the disabled student may challenge the regular education issues raised by the disciplinary action (e.g., whether the student did what he was charged with doing) at a regular education discipline hearing, but does not have a right to challenge the disciplinary action under Section 504. For example, the parent has no right to challenge the disciplinary action by asserting that the student's drug or alcohol-related misconduct was disability-related.

Can "social maladjustment" be a disability under Section 504?

Maybe. A student with a "social maladjustment" (e.g., conduct disorder or oppositional defiance disorder) may qualify as a disabled student under Section 504 if the student's condition substantially limits the student's ability to perform a major life activity (e.g., to learn or attend school). Such a student may need medication administration, school counseling, a behavioral intervention plan, or another type of special education or related aid or service to participate in or benefit from the district's education program.

Is “specific learning disability” defined the same under Section 504 as it is under IDEA?

Yes. “Specific learning disability” is a legal term of art defined by IDEA. To be eligible under IDEA as having a specific learning disability, a student must have a severe discrepancy (as defined by state law) between intellectual ability and achievement. Section 504 interprets the term as it is used in IDEA.

Can a district require a parent to provide a medical diagnosis before it will initiate an evaluation of a student under Section 504?

No. Under Section 504, a district must evaluate a student if the district knows or suspects that the student, because of a disability, needs special education or related aids or services, regardless of whether the student has a medical diagnosis. A district may provide a student medical diagnostic services, as a related service, if the district believes that it needs a medical diagnosis to determine whether a student has a medical condition.

Does a student with a medical diagnosis automatically qualify as a disabled student under Section 504?

No. Not every medical diagnosis will substantially limit a student’s ability to perform a major life activity. However, if a medical diagnosis does substantially limit a student’s ability to perform a major life activity (e.g., to learn or attend school), the student may qualify as a disabled student under Section 504. Such a student may need an individual health plan, an emergency care plan, or another type of special education or related aid or service documented in a Section 504 plan to participate in or benefit from the district’s education program.

Does a student with a “life threatening health condition,” as defined by state law, automatically qualify as a disabled student under Section 504?

Yes. Because state law, SHB 2834, defines “life threatening health condition” as a health condition that puts a student in danger of death during the school day if a medication or treatment order and a nursing care plan are not in place, by definition, a student with a “life threatening health condition” has a physical or mental impairment that substantially limits a major life activity, and qualifies as a disabled student under Section 504.

What should trigger an initial evaluation under Section 504?

A district should evaluate a student if the district knows or suspects that, due to a disability, the student needs special education or related aids or services to participate in or benefit from the district’s education program.

For example, the following situations may trigger an initial evaluation under Section 504:

- a student failing to achieve passing grades
- a student failing to advance from grade to grade
- a student being chronically absent from school
- a student returning to school after a serious illness or injury
- a student returning to school after alcohol or drug treatment
- a student being diagnosed with a “life threatening health condition”
- a student being expelled from school

Can a district limit its duty to provide FAPE to a disabled student based on cost?

No. As a general rule, a district’s FAPE obligation under Section 504 is not subject to cost considerations. For example, a district generally may not refuse to provide necessary special education or related aids or services to a disabled student because doing so would cause the district a financial hardship.

Can a district refuse to provide special education services to a disabled student because the student doesn’t meet the eligibility criteria under IDEA?

No. A district cannot refuse to provide special education services to a disabled student who needs special education services simply because the student doesn’t meet the eligibility criteria under the IDEA. However, as a practical matter, the only disabled students who are likely to need special education services are students who are eligible for special education under IDEA.

Can a district deny a disabled student admission under school choice?

Maybe. If a district chooses to participate in school choice, it must consider and act upon requests for admission under school choice in a manner that affords disabled students an equal opportunity to be admitted as compared to non-disabled students. As a general rule, a district cannot deny a disabled student admission under school choice unless it has a legitimate, nondiscriminatory reason for doing so (e.g., the grade level or school that the student needs is at capacity). A resident district’s refusal to release special education funds for a student is not a legitimate reason to reject a disabled student under school choice.

Can a district place a disabled student on a shortened school day?

Maybe. As a general rule, a district cannot limit the length of a disabled student’s school day unless it has a legitimate, nondiscriminatory reason for doing so (e.g., a shortened school day is necessary to provide a particular student FAPE). In general, transportation difficulties, staff shortages, and

other administrative concerns are not legitimate reasons to place a disabled student on a shortened school day.

Can a district exclude a disabled student from a field trip?

Maybe. As a general rule, a district cannot exclude a disabled student from participating in a field trip for which the student is otherwise eligible to attend unless the district has a legitimate, nondiscriminatory reason for doing so (e.g., it is not medically or behaviorally safe to include the student). It is not a legitimate reason to exclude a disabled student from a field trip because:

- the student needs a school health service (e.g. the administration of medication or the assistance of a school nurse) during the field trip; or
- the student's parent or guardian is unable to attend the field trip, unless the participation of the parents or guardians of non-disabled students is required.

Is a disabled student entitled to extended school year (ESY) services?

Maybe. As a general rule, a district must provide ESY services to a disabled student if:

- the student's ability to perform a critical skill would substantially regress during a normal school break and the student would not recoup the lost skill within a reasonable period of time; or
- for one or more other reasons, the interruption of instruction on a critical skill during a normal school break would prevent the student from benefiting from his or her education program during the regular school year.

How does Section 504 apply to the disciplinary removal of a disabled student from school?

Section 504 protects disabled students from being improperly removed from school for misconduct that is related to their disability. As a general rule, Section 504 and IDEA apply to the disciplinary removal of disabled students in a similar manner. Before a district can implement a disciplinary action that constitutes a "significant change in placement" (Refer to "What is a 'significant change in placement' under Section 504?"), it must evaluate the student to determine whether the student's misconduct is either related to his or her disability or due to an inappropriate placement. This type of evaluation is commonly called a "manifestation determination" (Refer to "What is a 'manifestation determination' under Section 504?"). If a disabled student's misconduct is a manifestation of his or her disability, a district cannot implement a disciplinary action that constitutes a significant change in the student's placement. If a disabled student's misconduct is not a manifestation of his or her disability, a district can discipline the student in the same manner that it disciplines non-disabled students for the same misconduct. Under Section 504, unlike IDEA, a district does not have to provide a disabled student educational services during the period of time the student is properly removed from school for disciplinary reasons.

What is a “manifestation determination” under Section 504?

A “manifestation determination” is an evaluation that answers two questions:

- Is the misconduct in question related to the student’s disability?

This determination must be based upon evaluation data related to behavior, and must be recent enough to afford an understanding of the student’s current behavior. Misconduct is a manifestation of a disability if it “arises from the disability,” “is caused by the disability,” “has a direct and substantial relationship to the disability,” or if the disability significantly impairs the student’s behavioral controls. Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student’s disability. A determination that a student knows the difference between right and wrong does not constitute a determination that the student’s misconduct was or was not a manifestation of the disability. In addition, a district cannot make a categorical determination that misconduct is or is not a manifestation of a disability based on a student’s IDEA eligibility label.

- Is the misconduct in question due to an inappropriate placement?

This determination must be based upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. District staff does not need to use all of the sources of information listed above in every instance. The point of the requirement is to ensure that more than one source of information is used in making such a placement decision. In addition, the district should examine the kinds of educational placements that previously have been tried with the student and determine whether a placement more restrictive than the current placement would control the student’s behavior. As a general rule, a district should not long-term suspend or expel a student without first attempting to control the student’s behavior by placing the student in a more restrictive educational placement unless it has a legitimate reason for rejecting a more restrictive placement as a viable placement option.

Is a district required to waive uniform age-eligibility requirements to enable a disabled student to participate in interscholastic athletics?

Maybe. This issue arises when a student is retained early in his or her school career for disability-related reasons and “ages out” of interscholastic athletic competition while in high school. As a general rule, a district can impose uniform age-eligibility requirements to participate in interscholastic athletics as long as it does so for disabled and non-disabled students alike. On the other hand, a district may be required to waive such eligibility requirements for interscholastic athletics if a disabled student “ages out” of athletic eligibility because a district’s denial of FAPE caused the student’s retention.

Is a district required to waive minimum grade/credit hour eligibility requirements to enable a student to participate in extracurricular activities?

Maybe. This issue arises when a disabled student is denied participation in extracurricular activities because he or she hasn't met the minimum grade/credit hour requirements for eligibility. As a general rule, a district can impose minimum grade/credit eligibility requirements to participate in extracurricular activities as long as it does so for disabled and non-disabled students alike. On the other hand, a district may be required to waive such eligibility requirements for extracurricular activities if a disabled student can establish that a district's denial of FAPE caused the student's low grades/credit hours. In addition, a district may choose to waive such eligibility requirements if a student needs to participate in extracurricular activities to receive FAPE.

Is a district required to modify the curriculum in a general education class to accommodate a disabled student?

Maybe. A district must modify the curriculum in a general education class if a disabled student needs a modified curriculum to participate in or benefit from the class and the necessary modification does not fundamentally alter the nature of the class. A district is under no obligation to provide a curriculum modification that would result in a class that is fundamentally different in nature. For example, if a student is enrolled in a lab science class and the student cannot complete the lab requirement due to disability-related absences, the district is under no obligation to modify the class by waiving the lab requirement. The decision of whether a disabled student needs a modified curriculum is a placement decision under Section 504.

Is a district required to modify the grading system in a general education class to accommodate a disabled student?

Maybe. A district must modify the grading system in a general education class if doing so is necessary to provide a disabled student an equally effective system to assess the student's performance in the class. The decision of whether a disabled student needs a modified grading system is a placement decision under Section 504.

Can a district indicate on a disabled student's transcript that it provided the student a modified curriculum or grading system in a general education class?

Yes. A district can indicate on a disabled student's transcript that it provided the student a modified curriculum or grading system in a general education class if it has a legitimate, nondiscriminatory reason for doing so. For example, it is not discriminatory for a district to indicate on a student's transcript the nature of the curriculum or grading system provided to the student if the district does so for disabled and non-disabled students alike.

Can a district provide a modified diploma to a disabled student?

Yes. As a general rule, a district can impose minimum requirements to receive a regular diploma as long as it does so for disabled and non-disabled students alike. For example, a district can provide a modified diploma to a disabled student because the student has not met the established minimum requirements for receipt of a regular diploma. If a student does not graduate with a regular diploma, the student is eligible to receive FAPE until the age of 21.