
A GUIDE TO

SECTION 504

OF THE
REHABILITATION ACT OF 1973



A Guide to Section 504 is a pamphlet that describes the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, with respect to elementary and secondary students. This pamphlet is designed specifically to provide parents and educators with the necessary information to work in partnership to provide access to an appropriate education, as well as develop appropriate accommodations for students with mental or physical impairments that substantially limit a major life function.

WHAT IS SECTION 504?

Section 504 is a federal civil rights law that protects the rights of persons with qualifying disabilities. It requires that recipients of federal funds make programs and activities accessible to all persons with disabilities. Section 504 has three areas of emphasis: employment; facility accessibility; and requirements for preschool, elementary and secondary education programs/activities. This booklet focuses solely on students.

SCHOOL DISTRICT RESPONSIBILITY

The school staff and parents must work in collaboration to ensure the student is provided necessary accommodations and/or services. Students who have disabilities that limit their ability to access or participate in education programs are entitled to rights under Section 504. This is true whether or not they may require specialized instruction (special education).

HOW DOES SECTION 504 DEFINE “DISABILITY”?

Section 504 of the Rehabilitation Act of 1973 protects persons from discrimination based on their disability status. A person is considered to have a disability within the definition of Section 504 if he or she:

- has a mental or physical impairment which substantially limits one or more of such person’s major life activities;
- has a record of such impairments; or
- is regarded as having such an impairment.

In general terms, this means that without modifications and/or interventions, the student would not have a comparable opportunity to an appropriate education. An impairment that is episodic or in

remission is a disability if it would substantially limit a major life activity when active.

HOW IS “SUBSTANTIALLY LIMITS” DEFINED?

Unless a mental or physical condition substantially limits a major life function, the person does not qualify under Section 504. The Americans With Disabilities Act (ADA) and its 2008 Amendments did not change the “substantially limits” language but it does suggest that while a significant limitation must be present it need not prevent or severely restrict the performance of a major life activity. Another change is that when a district determines limitation they may not consider ameliorative effects of medication or other medical treatments. Contact lenses and ordinary eyeglasses are the only mitigating measures that can be considered to determine whether impairment is substantially limiting.

WHAT IS A “MAJOR LIFE ACTIVITY”?

“Major life activities” include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The ADA Amendments Act of 2008 includes a non-exhaustive list of major activities such as sleeping, eating, concentrating, and the operation of “major bodily functions” such as immunity, normal cell growth, elimination, digestion, and endocrine function. School staff should consider possible 504 evaluation for any health condition that substantially impacts even one major life function.

HOW DOES SECTION 504 DEFINE “APPROPRIATE EDUCATION”?

A free appropriate education is one provided by the public school that (1) is designed to meet the individual educational needs of persons with a disability as adequately as the needs are met of persons without disabilities, and (2) is based upon adherence to evaluation, placement and procedural safeguard requirements of the Act.

IDENTIFICATION OF STUDENTS ELIGIBLE UNDER SECTION 504

Many students go through school with a disability, yet never need accommodations. Each district is required to have a plan to identify students that may have a disability and qualify for Section 504. The parents may, and should be encouraged to, inform the school district when their child has a disability. In many cases, a student's disability will be disclosed in the student's health history or a parent may present a doctor's letter listing a medical diagnosis and perhaps what accommodations are needed. A school district should consider the doctor's recommendations along with other information collected as part of a complete evaluation. While it is the doctor's responsibility to diagnose and treat medical conditions, it is the school district's responsibility to evaluate the student's needs using multiple sources to determine if the student is eligible and to develop and implement any necessary accommodations or services for the student.

EVALUATION

If the district believes that, because of a qualifying disability, a student may need accommodations or services, they must evaluate. In assessing whether a student has a Section 504 qualifying disability, information should be gathered from multiple sources to better understand the difficulty and needs of the student. Relevant information may include:

- information gathered from school records, observations, interviews, medical or hospital records, rating scales, permanent products that the student has produced and curriculum-based measurement probes.
- interviews with the student's teacher(s), parents and medical or mental health professionals who have evaluated the student.
- educational records and permanent products such as standardized test scores, attendance records, disciplinary records, hearing or vision screening results, samples of daily work or the teacher's grade book.
- direct observations of the student.

The type of disability believed to be present determines the components of a Section 504 evaluation and the type of accommodations and/or services the student may require. The

evaluation must be sufficient to accurately assess the nature and extent of the disability, its effect on major life activities, and recommended accommodations and/or services. Comparisons are made to typical peers to determine the degree of limitation. Understanding how a student functions in different settings is important to formulate ideas for accommodations and services. Effects of the disability must be evident in the school setting to require a Section 504 evaluation.

Section 504 of The Rehabilitation Act of 1973 mandates that team decisions be based upon information drawn from a variety of sources and that all information considered be documented. Eligibility, service, and accommodation decisions must be made by a group of persons knowledgeable about the child, the disability, the meaning of the evaluation data, and placement options. If the student qualifies, the district should develop and implement an accommodation plan that outlines the details of any needed services or accommodations. An evaluation is required prior to any significant change in placement. Re-evaluations must also be conducted on a “periodic basis.” It is recommended, but not required, that reviews be conducted yearly and that re-evaluation be conducted every three years, the same as special education requirements.

WHAT DOES “ACCOMMODATION” MEAN?

An appropriate education for students eligible under Section 504 may consist of education in general education classes with the needed accommodations being made and/or the use of supplementary services/ programs designed to meet the unique needs of a particular student. Adjustments in academic requirements and expectations may be necessary to accommodate the needs of an individual student with a disability to enable him/her to participate in the general education program.

- Accommodations must be individualized.
- Accommodations should be designed to meet the individual educational needs of students with disabilities as adequately as the needs of other students are met.
- Modifications can be made to general education programs or the provision of different programs may be necessary.

DISCIPLINE

Students who are eligible for Section 504 accommodations and services, as well as services under the IDEA, are disciplined consistent with the IDEA. To discipline a student who is receiving Section 504 accommodations, but who is NOT receiving services under the IDEA, administrators need to conduct an analysis similar to IDEA, but it may have different results. In disciplining a student:

- the administrator needs to determine whether the student committed the infraction of which the student is accused;
 - the student’s team needs to determine whether the behavior was caused by the disability (manifestation conference).
- If so, the student’s team determines whether the accommodation plan is appropriate and whether the student needs a change in the plan.
- If the team determines the behavior was not caused by the disability, the student is referred to administration for discipline as a general education student.

It is important to note that the Office of Civil rights in their publication *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities* advises that “Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities”.

WHAT PROCEDURAL SAFEGUARDS DO PARENTS HAVE?

Parents and students have specific rights under Section 504. The district must inform parents and students of these rights and be careful not to deprive or infringe upon them. Parents have the right to be notified in writing of any decisions made by the school district concerning the identification, evaluation or educational placement of students pursuant to Section 504. OCR has interpreted Section 504 to require that districts obtain parental consent for initial evaluations. In addition parents have the right to:

- examine, copy and request amendments to the student’s educational record.
- an impartial hearing regarding the school district’s decisions. The impartial hearing officer needs to be an individual outside the school district or an AEA staff member from outside the AEA

in which the home school is located. The parents have a right to counsel for the impartial hearing.

- further review of the impartial hearing officer's decision.

SECTION 504 PARENT AND STUDENT RIGHTS

As a parent, you have the right to:

- Participation of your child in school district programs and activities, including extracurricular programs and activities, to the maximum extent appropriate, free of discrimination based upon the student's disability and at the same level as students without disabilities;
- Receipt of free educational services to the extent they are provided students without disabilities;
- Receipt of information about your child and your child's educational programs and activities in your native language;
- Notice of identification of your child as having a qualifying disability for which accommodations may need to be made and notice prior to evaluation and placement of your child and right to periodically request a re-evaluation of your child;
- Inspect and review your child's educational records including a right to copy those records for a reasonable fee; you also have a right to ask the school district to amend your child's educational records if you feel the information in the records is misleading or inaccurate; should the school district refuse to amend the records, you have a right to a hearing and to place an explanatory letter in your child's file explaining why you feel the records are misleading or inaccurate;
- A hearing before an impartial hearing officer if you disagree with your child's evaluation or placement; you have a right to counsel at the hearing and have the decision of the impartial hearing officer reviewed.