

504 Manual

ESS Essentials



ESS Department
Director of ESS 520-568-5121
Maricopa Unified School District

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Introduction

Section 504 of the Rehabilitation Act of 1973 (sometimes referred to as “504”) prohibits discrimination against students on the basis of their disability.

The purpose of this manual is to inform District employees and parents about Section 504 and the District’s procedures to comply with the requirements for Section 504. This manual reflects the District’s commitment to serve ALL children.

The District expects employees to be knowledgeable about District procedures governing Section 504 activities, grievance procedures for resolving Section 504 complaints, and parent and student rights. If you have questions pertaining to Section 504, please contact the individual listed below who have been designated by School District to serve as the District 504 Coordinator. Each school site will also have a staff member designated to act as the Section 504 Team Coordinator. Please contact your school Principal for the name of the individual acting in that capacity.

District 504 Coordinator

ESS Director: 520-562-5121

Adapted from the previous Glendale Union High School District *Section 504 of the Rehabilitation Act of 1973* manual with revisions adapted from Richards Lindsay & Martin, L.L.P. with regards to the 504 Eligibility Forms. With respect to the Section 504 Eligibility Forms, the form may be (1) reproduced only for internal operational educational (non-commercial) purposes; (2) reproduced for internal educational websites (i.e.

non-public websites) only to allow for remote downloading and printing by school employees; and (3) adapted into PDF format only for manual data input, with no local or remote data storage (for the avoidance of doubt, this material may not be integrated with any technology system or used in an automated manner to store or capture data).

Section 504 Background Information

What is Section 504?

The Rehabilitation Act of 1973, commonly referred to as “Section 504,” is a federal statute that prohibits discrimination against persons on the basis of their disability by institutions, such as School Districts, that receive Federal financial assistance. It states:

No otherwise qualified individual with a disability 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.

Section 504’s purpose is, among other things, to assure that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. Responsibilities of school districts under Section 504 include Child Find, Evaluation, Free Appropriate Public Education, Placement, and Procedural Safeguards. An eligible student under Section 504 is a student who has a physical or mental impairment that substantially limits a major life activity. If a student is covered by Section 504, School District must provide free appropriate public education (FAPE), including accommodations as are necessary to ensure that the student has equal access to services, programs and activities offered by our schools.

How does Section 504 differ from IDEA?

A student who qualifies for special education services under the Individuals with Disabilities Education Act (IDEA) is, in all cases, a qualified student with disabilities under Section 504. The converse, however, is not true: a qualified student with disabilities under Section 504 is not qualified in all cases to receive special education services and the protections of IDEA. In other words, some students with disabilities may qualify for protections under Section 504 but do not qualify for special education services under IDEA.

If a student with disabilities is receiving special education services in accordance with IDEA, the District’s obligations to provide FAPE have been met, but the student is still entitled to the non-discrimination protection under Section 504. However, if a student is determined ineligible under IDEA, the Section 504 team may consider whether the student qualifies for the protections of Section 504.

This manual will focus solely on Section 504. Any questions regarding IDEA should be directed to a school psychologist or the Special Education Department.

Key differences between IDEA and Section 504

Identification	
IDEA	Section 504
The student must have a disability that falls within one or more specific categories of qualifying conditions: autism, specific learning disability, speech or language impairment, emotional disturbance, traumatic brain injury, visual impairment, hearing impairment, deafness, intellectual disability, deaf blindness, multiple disabilities, orthopedic impairment, and other health impairments.	The student must have a physical or mental impairment that substantially limits a major life activity (e.g., walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, performing manual tasks, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communicating).
The student's disability must adversely affect educational performance, and as a result of the disability, the student requires special education and related services.	The student's disability must prevent equal access to or benefit from the school's programs or services.
Evaluation	
Full comprehensive evaluation, including psychological evaluation. Decision by multi-disciplinary team, including parent.	Evaluation using relevant information from a variety of sources. Decision by a group of knowledgeable persons.
Parent consent required.	Parent consent required.
Annual review of student's IEP. Mandatory re-evaluation every three years.	"Periodic" re-evaluation required, but no prescribed time period.
Independent evaluation at district expense if parents disagree with the district's evaluation.	No provision for independent evaluation at District expense.
Dispute Resolution	
District complaint	District complaint
State complaint	Not available
Federal complaint (Office for Civil Rights)	Federal complaint (Office for Civil Rights)
Due process hearing by state-appointed hearing officer within 45 days.	Due process hearing by District-appointed hearing officer.

Identifying Students for Section 504 Eligibility

ADA Amendments Act

When Congress amended the Americans with Disabilities Act in 2008, the intent was to ensure a broad scope of protections under the ADA and to shift the analysis away from whether the individual had a disability to the district's obligation to ensure equal educational opportunities.

What criteria are used to determine 504 eligibility?

For a student to qualify for Section 504 protection, the student must meet three criteria: **(1) have a mental or physical impairment, (2) which substantially limits, (3) one or more major life activities.** Simply having a condition or disability does not automatically qualify a student for Section 504 protections. The condition must present a barrier to the student's ability to access the same educational opportunities as those afforded a student without disabilities. While there are no disabilities that are automatically eligible for Section 504 protections, Office for Civil Rights ("OCR") has issued guidance that indicates in "virtually every case," diabetes, epilepsy, bipolar disorder, or autism will result in eligibility under Section 504. See Dear Colleague Letter, 112 LRP 3621 (OCR 2012). It is important to understand that all three criteria must be met before the student is eligible for Section 504 protection. Additional detail on each of the three criteria follows.

Mental or physical impairment.

This criterion includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. Mental or psychological disorders are also covered. Section 504, in contrast to IDEA, does not limit eligibility to specific diseases or categories of medical conditions. Environmental, cultural, and economic disadvantages are not covered unless the student who has any of these characteristics also has a physical or mental impairment.

Substantially limits.

Section 504 does not specifically define the term "substantially limits." The basis for evaluating this criterion is the impact the impairment has on one or more of a student's major life activities. A student's impairment is a substantial limitation if the student's "important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." See S. Rep. No. 101-116, at 23 (1989) and Congressional Record, (Sept. 16, 2008), p. S8842. Further, an impairment does not need to prevent or severely or significantly restrict a major life activity to be considered substantially limiting. 29 C.F.R. 1630.2(j)(1)(ii).

The Section 504 Team will consider the nature and severity of the disability as well as how long the disability is expected to last. OCR has indicated that temporary impairments are not a disability under Section 504 unless the severity of the impairment will result in a substantial limitation for an extended period of time. See Frequently Asked Questions about Section 504 and the Education of Children with Disabilities, (OCR 2009). However, an impairment that is episodic or in remission is considered a disability if it would substantially limit a major life activity when it is in an active phase.

Identifying Students for Section 504 Eligibility Continued....

As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, **must not** consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. However, Congress has now specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthesis (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses must be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

Major life activities.

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning and working. Effective January 1, 2009, Congress provided additional examples of general activities that are major life activities: eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

Section 504 Referral and Eligibility Process

How is a Section 504 evaluation request made?

Any parent or guardian, teacher, counselor or other school staff member who believes that a student may have a qualifying disability may request a Section 504 evaluation. The referral should be made to the student's Site 504 Coordinator.

What is the process for reviewing Section 504 eligibility?

Upon receipt of the Section 504 Referral form, the 504 Coordinator must send to the parent(s)/guardian(s) the Parent Notice for Consideration for Section 504 Protections, Parent Input form, Student Input Form and Parent's Rights and Safeguards under Section 504. In addition, the 504 Coordinator must send the Teacher Input form to all the student's teachers.

504 Coordinator then schedules a Section 504 meeting to review the referral. The School 504 Coordinator completes the Parent and Student Invitation: Section 504 Meeting form and provide this meeting notice to all invited participants.

The Section 504 Team must include individuals knowledgeable about the needs of the student and the evaluation data being reviewed. This team should include the parent or guardian of the student, teachers, counselors, other school staff members, and staff members of community agencies, if applicable and with consent of the parent/guardian. The parent/guardian, as well as the student, should be included in this process whenever possible. The team's role is to review the nature of the student's impairment and determine how it affects educational access. A decision to not conduct a Section 504 evaluation will be extremely rare and most likely will be based on similar requests for the same disability area in one calendar year. The 504 Coordinator may also contact the District 504 Coordinator to assist with this process.

During the meeting, the 504 Coordinator will facilitate a review of existing data, using the Section 504 Initial and Periodic Re-evaluation form to determine the nature of the student's disability and what, if any, additional data is needed. Information that might be considered includes (but is not limited to) teacher input form, parent input form, student input form, grades, attendance reports, behavior plans, review requests, cumulative file information, psychological evaluations, medical information, observations, and standardized testing information. This review of data will assist the Section 504 Team in determining if further assessments need to be conducted or if a decision on eligibility may be made. The team must ensure that information obtained from all sources is documented and carefully considered.

If the Section 504 team determines that additional data is necessary before an eligibility determination can be made, the team must develop an assessment plan and obtain parental consent for further assessment.

If the Section 504 team determines that there is sufficient data to make an eligibility determination, the team must complete the Section 504 Eligibility Determination, which asks the team a series of questions to determine if there is an impairment that substantially limits a major life activity. Once the team determines that the student is eligible for Section 504 protections,

Section 504 Referral and Eligibility Process Continued....

the team must consider whether the student requires a Section 504 Plan for his/her educational needs to be met as adequately as his/her non-disabled peers.

The Section 504 team may make the following determinations:

- The student is not eligible for Section 504 protections;
- The student is eligible for Section 504 protections and requires a Section 504 Plan;
- The student is eligible for Section 504 protections but does not require a Section 504 Plan because the impairment is in remission;
- The student is eligible for Section 504 protections but does not require a Section 504 Plan because the student's needs are being met due to mitigating measures;
- The student is no longer eligible for Section 504 protections; or
- The student is no longer eligible for Section 504 protections because he/she is now eligible under the IDEA.

Following the eligibility determination, the 504 Coordinator will provide the parent(s)/guardian(s) with a copy of the Eligibility Determination, which documents the decision made by the Section 504 team.

If the Section 504 team determines that the student is eligible and requires a Section 504 Plan, the team will create the Plan that addresses all areas of need and the appropriate instructional and testing accommodations.

Following the meeting, the 504 Coordinator will provide a copy of the Section 504 Student Accommodation Plan to all the student's teachers and other individuals responsible for implementing the Section 504 Plan and obtain signatures on the Section 504 Teacher Confirmation. This procedure should be followed when students' schedules change during the school year and at the beginning of each school year.

A Section 504 Team should review the Section 504 Student Accommodation Plan whenever a student moves to another school or it appears that changes to the Plan are needed. The purpose of a review is to add, subtract, and/or modify student accommodations as needed.

504 Coordinator is responsible for maintaining all of the forms, including a copy of the **signed** Section 504 Evaluation Referral, Parent and Student Invitation: Section 504 Meeting, Parent Consent for Section 504 Evaluation, Section 504 Eligibility Determination Report, Parent Notice: Section 504 Eligibility or Non-Eligibility Determination and Section 504 Student Accommodation Plan. Originals are to be sent to the MUSD ESS Department at the District Office and copies provided to the parent/guardian.

When is it not appropriate to offer a Section 504 Accommodation Plan?

Eligibility under Section 504 is always decided by evaluating and determining that all three criteria are met. The student must have a mental or physical impairment. That mental or physical impairment must be substantially limiting. The impairment must substantially limit one or more major life activities. If any of the three criteria are not met, the 504 Team should not create a formal 504 Plan for the student.

Section 504 Referral and Eligibility Process Continued....

Keep in mind that while a 504 Plan might not be appropriate, an informal intervention plan may be appropriate. If the 504 Team determines that the student is not eligible to receive a 504 Plan, 504 Coordinator is responsible for notifying the parent by completing and mailing, emailing or delivering in person the Eligibility Determination.

Here are some common mistakes relating to the Section 504 evaluation process:

- A parent and/or doctor presents the school with a disability diagnosis, and a 504 Plan is written without first determining if the disability causes substantial limitation of a major life activity.
- A student is placed on a 504 Plan solely to satisfy a highly competitive parent who wants specific accommodations to help his or her child receive higher grades or test scores on standardized tests, such as the SAT.
- A student fails to qualify for special education services under IDEA, and a 504 Plan is automatically written without first qualifying him or her based upon Section 504 criteria.

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

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

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 to a major life activity. For example, a student who has a physical or mental impairment would not be considered in need of services under Section 504 if the impairment does not in any way limit a major life activity, or only results in some minor limitation in that regard.

How should a school district handle an outside evaluation? Does all data brought to a Section 504 team need to be considered and given equal weight?

The results of an outside evaluation provided by a parent will be one of a variety of sources to consider. The Section 504 team must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight to be given to the various types of information considered will be determined by the Section 504 team.

Section 504 Referral and Eligibility Process Continued....

Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.34 (c)(3) provides that a student's eligibility for Section 504 must be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options.

Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the Section 504 Plan in place indefinitely after a student has been identified?

Section 504 requires "periodic" re-evaluation of the student. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

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 must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendment Act, Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less. However, impairments that are episodic or in remission are considered disabilities if they substantially limit a major life active when active.

Design and Implementation of a Section 504 Plan

Where will accommodations be provided for students and what are some examples of possible accommodations?

Section 504 requires that a student with a disability be educated with students without disabilities to the maximum extent appropriate for the student. As with IDEA, this is considered educating the student in the least restrictive environment. Implementation of most Section 504 plans occurs within the general education classroom.

Accommodations are generally those minor adjustments to things like seating arrangement, lesson presentation, assignments, and other facets of the learning experience that provide the student with equal access to learning opportunities. An example could be moving the student to a position in the room that best supports his or her ability to attend to schoolwork. Accommodations might involve the use of special visual aids, large print, or using video recordings. Allowing a student additional time to complete a specific kind of task is also an accommodation. Countless accommodations exist that can support a student's equal access to educational opportunities. It is the job of the Section 504 Team to identify the accommodations that will provide the student with educational access. The District requires Section 504 Teams to review the Arizona Department of Education *Test Administration Guidelines* to ensure there is an alignment within the Section 504 Student Accommodation Plan with allowable accommodations during State Standardized Testing and other testing circumstances. Please review the Arizona Department of Education's approved list of testing accommodations.

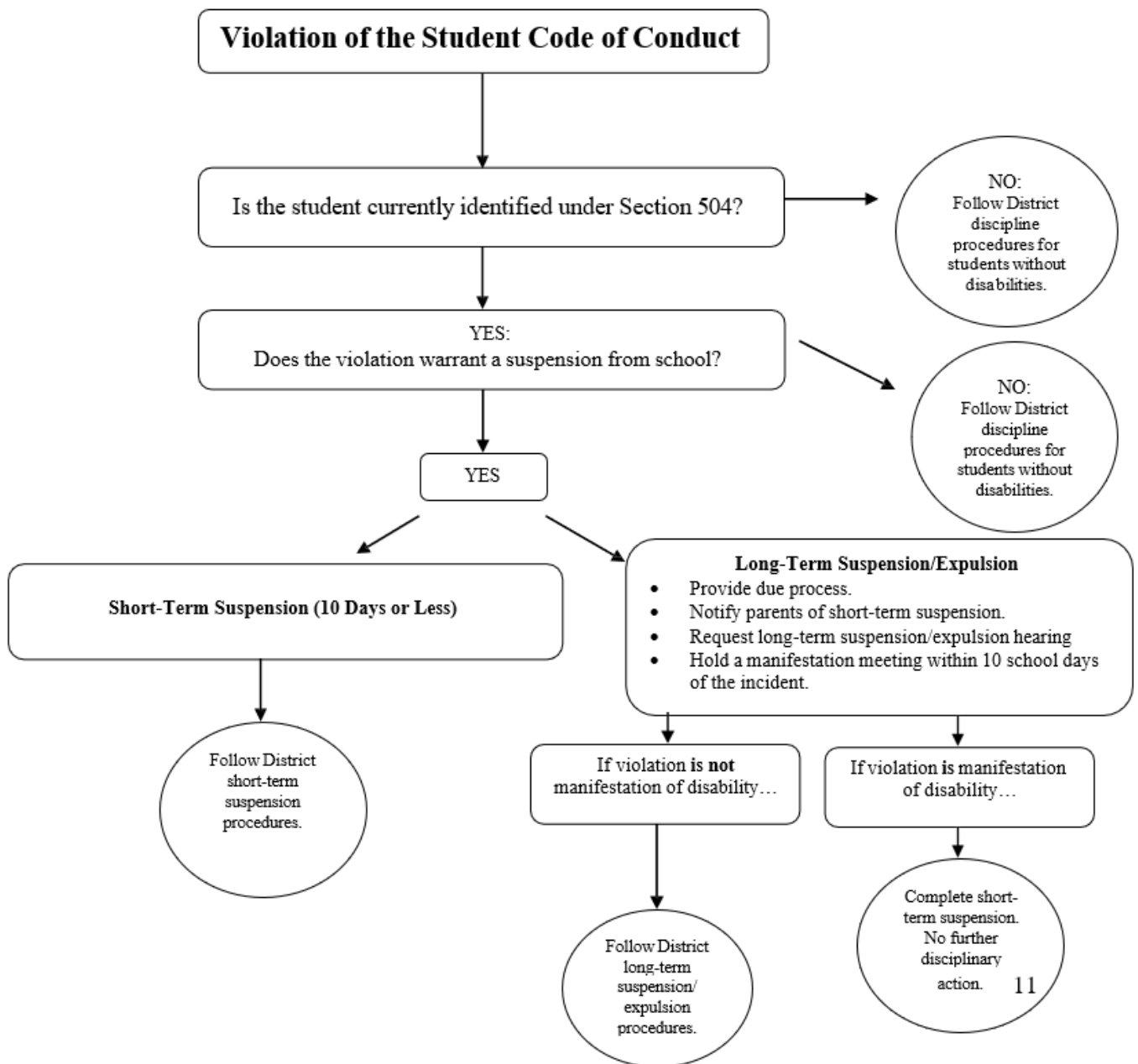
How are Section 504 accommodations and related services documented and reviewed?

If the Section 504 Team determines that a student has a qualifying disability, the team's second responsibility is to identify the student's needs and services and/or accommodations the student will receive. Documentation of the plan's details should be completed on the Section 504 Student Accommodation Plan form (see page 38 of this manual.) The Plan sets forth the accommodations that a student needs to have equal access to the learning process, or to other programs, activities, and services. The team will also need to determine if the student should take the State Standardized Test or other standardized tests under routine conditions without accommodations or if the student should take it with accommodations. If the team determines that the student should NOT take the State's standardized test or other standardized tests under routine conditions, then the team will need to write the testing accommodations listed on the Arizona Department of Education's approved list that are consistent with the instructional accommodations used in the student's educational program. The original Section 504 Student Accommodation Plan document will be kept in the District's Office of Special Education Records Department. Copies will be maintained by the School Counselor/Site 504 Coordinator as necessary.

Disciplining a 504 Student with Disabilities

What is the discipline process for a 504 student with disabilities?

Section 504 students with disabilities are subject to the same disciplinary action as students without disabilities, provided that the student's behavior is not a manifestation of his or her qualifying disability. A 504 Team must conduct a manifestation determination whenever a student with disabilities is subject to out-of-school suspension for 10 consecutive school days or more, or if multiple short-term suspensions would result in a significant change in placement. If the 504 Team concludes that the violation is a manifestation of the student's qualifying disability, the discipline process must end, and the 504 Team should review the 504 Plan to determine if changes are appropriate. If the violation is not a manifestation, the student is subject to the same disciplinary action that any student without disabilities would receive for the same violation.



Disciplining a 504 Student with Disabilities Continued....

Must a school make a manifestation determination when considering the long-term suspension or expulsion of a student with a Section 504 Plan?

Yes. Similar to suspension or expulsion of a student having a disability under IDEA, it is necessary to conduct a manifestation determination for a Section 504 student with disabilities when:

- The suspension or expulsion will be for more than 10 consecutive school days. Like IDEA, a suspension/expulsion of more than 10 consecutive days constitutes a significant change in placement and requires schools to determine if the cause of the behavior is the disability identified in the student's 504 Plan.
- A series of suspensions that total more than 10 days may also trigger the manifestation determination requirement of Section 504. If cumulative suspensions/expulsions for a student on a 504 Plan total more than 10 days, it must be determined if a significant placement change has occurred. This is done on a case-by-case basis. If a group of short suspensions creates a pattern of exclusion, then this constitutes a change in placement and the school must conduct a manifestation determination meeting before further suspensions or expulsions occur. OCR has identified some of the key factors in determining patterns of exclusion: the length of each suspension, the proximity of one suspension to another, the nature of the behavior, and the total amount of time the student is excluded from school.

Who makes the manifestation determination for a student on a Section 504 Plan and what information is included in this process?

The manifestation determination should be made by a Section 504 Team that consists of persons who have knowledge of the student and the meaning of the information that will be reviewed. When possible, the members of the Section 504 Team should be the same members who designed the student's Section 504 Plan. School officials responsible for school disciplinary procedures, such as the school principal or assistant superintendent, cannot make the determination. However, such administrators may present pertinent student information to the Section 504 Team and participate in the decision-making process.

The Section 504 Team must have available information that competent professionals would require when making a manifestation determination. Such information might include attendance and academic records, psychological evaluation data, behavior plans, discipline records, and staff observations. The information should be current enough to afford an understanding of the behavior that is the subject of the manifestation determination.

The manifestation determination should begin with the Section 504 Team deciding if the conduct in question was the direct result of the district's failure to implement the Section 504 Plan. If so, the school should not take any further disciplinary action. The Section 504 Team should review and update the Section 504 Plan, if appropriate.

If the student's Section 504 Plan had been properly implemented, the Section 504 Team will next consider if the behavior is the result of the student's disability. This inquiry is resolved by considering the relationship between the student's disability and his or her behavior. The team must decide whether the conduct in question was: (1) Caused by, or had a direct and substantial relationship to, the student's disability; or (2) A direct result of the district's failure to implement the student's Section 504 plan.

Disciplining a 504 Student with Disabilities Continued....

If the Section 504 Team answers in the affirmative, then the behavior is a manifestation of the student's disability and no disciplinary action can be taken past the 10 days.

If the Section 504 Team determines that the behavior is not a manifestation of the disability, the District may impose whatever long-term suspension or expulsion it would impose under the same circumstances if a student without disabilities was the offender. **The District has no obligation to continue to provide educational services to a 504 student during the period of a long-term suspension or expulsion.**

The 504 Team must conclude its work by completing a Section 504 Manifestation Determination Review form. (see page 42 of this manual.)

How does a school proceed with drug/alcohol violations by a student on a Section 504 Plan?

A student who is currently engaged in the illegal use of drugs/alcohol is not considered a student with a disability, and is, therefore, not entitled to protections under Section 504. Section 504 allows school districts to take disciplinary action pertaining to the use of possession of illegal drugs/alcohol against a Section 504 student who is currently engaging in the illegal use of drugs/alcohol to the same extent such discipline is taken against students without disabilities.

A student with a history of drug/alcohol abuse who has been successfully rehabilitated or is participating in a drug rehabilitation program and is not currently engaging in the illegal use of drugs, is covered by Section 504.

While the discipline of a student is allowed with no services provided to a student when drug/alcohol violations occur, this does not mean the student's physical or mental impairment no longer exists. Upon completion of the disciplinary action, the Section 504 Team should reconvene to revisit eligibility and the Section 504 Accommodation Plan to determine if any revisions should be made.

504 Procedural Safeguards and Parent/Student Rights

Must schools secure parental consent before conducting an evaluation meeting?

Schools must include parents in the evaluation process and provide a written meeting notice prior to the evaluation meeting using the Parent and Student Invitation: Section 504 Meeting. Although Section 504 does not require obtaining parent consent prior to conducting a Section 504 evaluation, OCR has issued several opinions indicating that districts do so. School Counselors should use the Section 504 Eligibility Form which contains a section allowing for acquiring parent consent for collecting additional data and for placement, if the student is eligible, on a Section 504 Student Accommodation Plan.

Are schools required to provide parents with a list of parent/student rights under Section 504 before conducting an initial student review?

Yes. The district is required to establish and implement procedural safeguards that include:

- Notice to the parent explaining any evaluation or placement decisions.
- An opportunity for parents to review relevant records.
- An impartial hearing with opportunity for participation by the student's parent or guardian with representation by counsel.
- An appeal procedure to review the hearing decision.

These procedural safeguards have been addressed by creating Section 504 evaluation procedures and a set of forms that guide the evaluation team through the eligibility determination and placement process.

A notice concerning Parent's Rights and Safeguards Under Section 504 must be included with the Parent Notice for Consideration for Section 504 Protections form given to the parent/guardian prior to the 504-evaluation meeting. Likewise, the Parent's Rights and Safeguards Under Section 504 must be provided to the parent(s)/guardian(s) upon the eligibility determination made by the Section 504 team.

Working to Address Concerns and Complaints

Section 504 Grievance Procedure

When a student, parent, or community member has a complaint or grievance against the District based on Section 504, the District will follow the policies and procedures set forth in Governing Board Policy 5-202 *Students with Disabilities (Section 504 of the Rehabilitation Act of 1973) Opportunities* and corresponding procedure 5-202.A.

Due Process Procedures

Parents or the District may initiate a due process hearing on a matter related to: 1) eligibility and related procedures; 2) procedural safeguards; 3) provision of a free and appropriate public education to the student; or 4) placement of the student. If a parent or adult student files a Section 504 due process complaint, the district will follow the policies and procedures set forth in Governing Board Procedure 5-202.A *Students with Disabilities (Section 504 of the Rehabilitation Act of 1973)*

Section 504: FAQs

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; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

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

2. Once a student is 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.

3. 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.

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

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

Section 504: FAQs Continued....

5. 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.

6. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

7. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

8. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

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

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

10. How should a recipient 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 must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act, Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

Section 504: FAQs Continued....

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

Yes, under certain circumstances. In the Amendments Act, Congress clarified that 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.

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

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

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

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

14. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a 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.

15. What procedural safeguards are required under Section 504?

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

16. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.