

Identifying Students for Section 504 Eligibility

What criteria are used to determine 504 eligibility?

For a student to qualify for Section 504 protection, the student must meet three criteria: (1) a mental or physical impairment, (2) which substantially limits, (3) one or more major life activities. If the student has an impairment that substantially limits a major life activity, the impairment is a qualifying disability if it creates a barrier to the student's ability to access the same educational opportunities afforded to non-disabled students. It is important to understand that all three criteria must be met before the student is eligible for Section 504 protection. Additional details on each of the three criteria follows.

1. 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.

Any physical or mental impairment may result in qualification under Section 504. Unlike IDEA, there are no categories of qualifying disabilities.

2. 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. It is vital to understand that for a student to qualify for 504, the impairment must impose, to a "considerable" or "large degree," a limitation to one or more major life activities. The 504 Team will consider the nature and severity of the disability as well as how long the disability is expected to last. Simply having a condition or disability does not automatically qualify a student for Section 504 protection. The condition must present a barrier to the student's ability to access the same educational opportunities as that afforded a non-disabled student, or a substantial limitation does not exist.

"Substantially Limits"

The definition of "substantially limits" was relaxed with passage of the 2008 ADA Amendments in two significant ways:

1. The amendments provide that "a(n) impairment that is episodic or in remission is a disability if it would substantially limit major life activity when active." For example, a student with Crohn's Disease who may have periodic flare-ups that require hospitalization must be evaluated based on how the disease affects him or her during those flare-ups, and not when the disease is inactive.
2. The 2008 ADA Amendments also clarified that a student may be eligible under Section 504 even if the student's disability or condition is controlled or mitigated. Mitigating measures include, but not limited to: Medication Medical supplies, equipment, or appliances Low-vision devices (excluding eyeglasses and contact lenses) Prosthetics (including limbs and devices) Hearing aides, cochlear implants or other implantable hearing devices Mobility devices Oxygen therapy equipment and supplies Assistive technology devices Reasonable accommodations or auxiliary aids or services Learned behavioral or adaptive neurological modifications

3. Major Life Activity:

The identified physical or mental impairment must affect a major life activity: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

"Major life activity"

The definition of "major life activity" was expanded by the 2008 ADA Amendments (the new language appears in bold): "major life activities" include, but are not limited to, caring for oneself, 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.

Common impairment that may entitle a student to a Section 504 plan includes communicable diseases (e.g., HIV, hepatitis, tuberculosis), medical conditions (e.g., asthma, allergies, diabetes), and attention deficit disorder (ADD or ADHD).

How does Section 504 differ from IDEA?

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

If a disabled student is receiving special education services in accordance with IDEA, then the student is adequately accommodated for the purposes of Section 504. For this reason, it is not necessary or appropriate to provide a disabled student with Section 504 protections (i.e., notice, evaluation and accommodation plan) if the student has already been determined eligible under IDEA. However, if a student is determined to be not eligible under IDEA, the evaluation team may want to consider whether the student would, nevertheless, qualify for accommodations under Section 504.