

What Is Section 504?

Section 504 is a civil rights statute, intended to eliminate obstacles to full educational participation by students with disabilities. The goal of Section 504 is the “equal educational opportunity for all students”.

Section 504 requires that “[n]o otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. *See* 20 U.S.C. § 794(a).

How Is a Student Eligible for Section 504?

In order to be qualified for assistance under Section 504, the student must be between the ages of three (3) and twenty-one (21) years of age and meet the definition of “disabled.”

A student is disabled if he/she

1. has a physical or mental impairment that substantially limits one or more major life activities
2. has a record of such impairment, or
3. is regarded as having such an impairment.

What Is a Physical or Mental Disability?

A physical or mental impairment means (A) a 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, genitourinary; hermic and lymphatic; skin and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

What Does “Substantially Limits” Mean?

Section 504 regulations do not define “substantially limits,” but has stated that the determination must be made on an individual basis.

Title II of the Americans with Disabilities Act provides three factors to characterize the term “substantially limits:”

- Nature and severity of the impairment
- Duration or expected duration of the impairment
- Permanent, long-term impact or expected impact of the impairment

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. These include medication, medical supplies, equipment or appliances, low-vision devices, prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices,

mobility devices, or oxygen therapy equipment and supplies. Further you cannot consider the use of assistive technology, reasonable accommodations, auxiliary aids or services, or learned behavioral or adaptive neurological modifications. Ordinary eyeglasses and contact lenses are not included in this provision.

What Is a Major Life Activity?

Major Life Activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Major life activities can also include major bodily functions such as immune system function, bowel function, neurological function, circulatory function, normal cell growth, bladder function, respiratory function, endocrine function, digestive function, brain function, and reproductive function.

How Is a Student Referred for Section 504 Eligibility?

Any parent, guardian, teacher, counselor or other school staff member who believes a student may need an accommodation for a qualified disability can request an evaluation for §504 eligibility. If you wish to request an evaluation for Section 504, use the **Parent Referral** form. The District must have parental consent before conducting an evaluation.

What Is the Eligibility Determination Process?

The decision to qualify a student for §504 services is made by a multidisciplinary team of people. This team includes persons knowledgeable about the student, the meaning of evaluation data, and educational accommodations and interventions. This typically includes persons such as the student's teacher, school psychologist, guidance counselor, school nurse, and school administrator. If necessary, other professionals may be invited. The family may also invite any relevant outside person(s).

In addition to the information provided by the parents, the following information must be reviewed at the meeting:

- Standardized achievement tests
- Medical information including hearing, vision, medications, and any relevant developmental history
- Academic grades and transcripts
- Primary language (home and student)
- Discipline records
- Attendance
- School history
- Teacher reports/observations

Evaluations under Section 504 are not limited to formal evaluation instruments. Because the disabilities that may fall under Section 504 are broader than the specific disabilities listed in IDEA, evaluative information for a student may come from a number of sources, including

aptitude and achievement tests, teacher recommendations, the student's physical condition (as attested to by the student's physician), the student's social or cultural background, or the student's adaptive behavior. Section 504's implementing regulations note that any evaluation of a student must consider all significant factors relating to the student's learning process, including adaptive behavior. Thus, evaluations must be based on the type of disability suspected and the kind of services needed. In some cases, the evaluation is done by the §504 Multidisciplinary Team. The team can look at existing evaluation data, review school records, obtain observation data, evaluate effectiveness of educational interventions over time, determine eligibility under §504, and recommend programming within general education.

After reviewing the relevant information, the team will determine whether the student is a student with a disability that significantly impacts a major life activity. In order to be eligible to receive legal protections under §504, the student's ability to perform **major life activities**, including, but not limited to, learning or behaving appropriately, **must be substantially limited and the definition of "substantially limited" must be more broadly construed and generally applied than "severely restricted."** The purpose of §504, as stated by Congress, is to provide "broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." Notwithstanding, the fact that a student has a diagnosed physical or mental impairment does not automatically mean s/he will qualify for an accommodation plan under §504.

Educational need is defined as a serious academic deficit and/or a serious behavior problem resulting from the child's disability (and not from other causes); or any other physical or mental impairment which seriously affects the student's opportunity to benefit from educational services.

If the team determines that the student is eligible for 504 protections, the team will develop a Section 504 plan.

How Is a 504 Plan Developed?

The §504 Multidisciplinary Team determines what educational accommodations are needed to achieve equality/ comparability of access to educational activities for the student with a disability. In addition to the normal and usual academic and school activities, students must also be given the opportunity to participate in non-academic and extracurricular services and activities, such as recreational and athletic activities, and school-sponsored clubs, events and activities. Participation in such non-academic activities may require accommodations.

The accommodations for the student should be documented in the **Section 504/ADA Accommodation Plan**.

How Is a 504 Plan Implemented and Reviewed?

All of the professional staff who work with the student must be provided a copy of the student's Section 504 plan. Paraprofessional staff who work with the student should also be thoroughly familiar with any accommodations that the student requires to receive an appropriate education.

On an annual basis, or more often if needed, the team will reconvene to review the plan. At the meeting, the following questions will be asked:

- Is the student still eligible for a 504 plan?
- Is there new information that needs to be considered?
- Are the current accommodations working?
- Do any changes need to be made to the plan?

Based on the answers to the above questions, the team may decide to continue the same 504 plan, make changes to the plan, or discontinue the plan because the student is no longer eligible.

When Is a Reevaluation Completed?

Before any change in placement, including long-term suspensions and expulsions, a reevaluation must be completed along with notice to parents. A reevaluation of the student's disability status must also be conducted every three years or more often, if needed.

What Are the Discipline Procedures under Section 504?

Some disciplinary procedures which apply to students with disabilities under IDEA also apply to §504 students. However students with disabilities under §504 who have been expelled do not have to be provided with educational services following expulsion, and there is no "stay put" requirement under §504.

If a student is being suspended for more than 10 days in a school year, the §504 Multidisciplinary Team must determine if the behavior that violated the school discipline code is related to the disability. This includes any accumulation of off-campus suspension days that exceeds 10 in one school year, long-term suspension, expulsion, and suspension or expulsion from a school bus (if that suspension results in the student missing school that day).

If the team determines that the behavior is caused by the disability, the Team should review the student's Accommodation Plan, Behavior Plan, and placement to determine if they were appropriate and were being implemented as written. If they are no longer appropriate, some or all of these documents must be revised to insure that they remain appropriate to the student's needs. If they were not implemented appropriately, this must be corrected immediately. The Team may also want to consider if any other changes need to be made to better meet the needs of the student. It is also important for the Team to decide if the student needs a Functional Behavior Assessment or a Behavior Plan, if one is not already in place.

The District may discipline a student with a disability under §504 who is currently using illegal drugs or alcohol to the same extent as action taken against non-disabled students. In such cases, §504 due process procedures, namely evaluation and manifestation determination, are not required. Special procedures also apply in the discipline of students with disabilities for possession of firearms.

When the discipline consequences that a student is to receive would constitute a “change of placement” (i.e., off-campus suspensions totaling more than 10 days in one school year, long-term suspension, or expulsion), whether or not a manifestation determination is conducted, the §504 Multidisciplinary Team is required to conduct an evaluation of the student’s needs and the appropriateness of his current accommodation plan. In most cases, this will be accomplished by the plan review process described above in this section.

What Are My Procedural Safeguards?

Procedural safeguards include:

- Notice
- Opportunity to examine the student’s relevant records
- Impartial hearing with the opportunity for participation by the student’s parents or guardian and representation of counsel
- A review procedure

When Can I Examine my Child’s Records?

Parents or guardians have the right to examine all educational records of the student, including the student’s §504 records. In general, only those persons with a legitimate educational interest, or “need to know,” have access to confidential information concerning the student’s disability and education.

What are the Due Process Procedures?

§504 requires that school districts have a procedure for conducting impartial due process hearings with the opportunity for participation by the student’s parents or guardian and representation by counsel. Either the parent or the school district may request a hearing.

A due process hearing is a legal procedure, which is conducted by an Impartial Hearing Officer (IHO).

Parents requesting a hearing should submit a written request to the District §504 Coordinator and include the following information:

- The name of the child and the person making the request;
- The address of the residence of the child;
- The name of the school that the child is attending;
- In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))) available contact information for the child, and the name of the school that the child is attending;
- A description of the nature of the problem relating to alleged discrimination under §504, including facts relating to the problem;
- A proposed resolution of the problem to the extent known and available to the party at the time;
- A suitable time for the hearing;

- Two possible dates for the hearing; and
- Indication of whether the hearing will be closed or open to the public.

The Impartial Hearing Officer must conduct the due process hearing and render a decision no more than 45 days from the date that the District received the parent's request for the hearing. The Impartial Hearing Officer may grant a continuance at the request of one of the parties, if the both parties agree.

During The Hearing

- Parents and the District may be represented by legal counsel or some other professional who may be knowledgeable about the child (if allowed by the Impartial Hearing Officer).
- The District and the parents may present evidence, and question and cross-examine witnesses who know about the child's disability.
- The child may be present at the hearing.
- After the Impartial Hearing Officer has heard the case, s/he will give a written decision.
- The Impartial Hearing Officer is impartial, and is not an employee of any school district. S/he will be well trained and understand what the law requires for children with special needs.

After The Hearing

- The parents will, upon request, receive an audio recording of all that was said at the hearing at no cost to them.
- A copy of the Impartial Hearing Officer's decision will be given to both the District and the parents. The Impartial Hearing Officer must render a decision within 45 days after the District's receipt of the request for a §504 Due Process Hearing. This can only be delayed if the District and the parents agree to the delay or the Impartial Hearing Officer has granted a continuance at the request of one of the parties.
- The decision made by the Impartial Hearing Officer is final unless the parents or the District appeal the decision to the appropriate state or federal court