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## **Section 504**

# **Policies and Procedures**

08.02.20

## **INTRODUCTION**

Section 504 of the Rehabilitation Act of 1973 is federal legislation that impacts schools and other entities that receive federal funding. The Act is a civil rights statute designed to eliminate discrimination against individuals in schools and the workplace because of disability. The Americans with Disabilities Act (ADA) incorporates all Section 504 provisions, and its protections are guaranteed regardless of federal funding. The regulations are very broadly written and intended to cover a wide range of public entities to prohibit discrimination on the basis of disability.

Taken together, Section 504 and the ADA prohibit discrimination by school districts against persons with disabilities, including students, their parent/guardian/students who have disabilities, and staff members. Included are all programs or activities of the school district receiving federal funds, regardless of whether the specific program or activity involved is a direct recipient of those funds. There is no state or federal funding provided to help schools comply with the requirements of Section 504.

Individuals who are disabled under the Individuals with Disabilities Education Improvement Act (IDEA) are also protected under Section 504/ADA. While Section 504 provides for services similar to those available through special education, the intent and requirements of the acts are different. IDEA is a mandate to provide special education and related services to students who meet specific eligibility criteria for one or more of 13 categories of disability and need special education and related services in order to access and make progress in the general school curriculum. Section 504 provides broader and different coverage than does the IDEA with a focus on providing equal opportunity to all students through “reasonable accommodations”. It is important to note that Section 504 is not a consolation prize for students who do not meet the eligibility requirements of IDEA

## **OVERVIEW**

Section 504 applies only to students who are considered eligible under the act. There are two primary requirements under Section 504:

- Nondiscrimination
- Provision of a free and appropriate public education (FAPE)

The regulations require identification, evaluation, appropriate services, and procedural safeguards.

## ***Nondiscrimination***

Section 504 “specifically prohibits schools from discriminating on the basis of disability in providing any aid, benefit, or service”. This means that all otherwise qualified students receive equal access to services and benefits provided by the school.

Examples of discrimination include:

- Refusing to allow any student with a disability the opportunity to be on the honor roll;
- Excluding a student from an academic class because the classroom is inaccessible;
- Refusing to give course credit or lowering a grade for a student due to nonattendance when the absences are related to a disabling condition;
- Refusing to allow any otherwise qualified student with a disability the opportunity to participate in extracurricular activities;
- Refusing to provide opportunities for students with disabilities to try out for academic or sports teams.

Nondiscrimination does not mean that every student has access to every program. Even a student with a disability under Section 504 is not automatically included in all school activities. A student must be “otherwise qualified” to participate. To be otherwise qualified means that a student meets all other requirements of the activity and would be able to participate with reasonable accommodations.

## ***Free and Appropriate Education (FAPE)***

Every student in a school must receive equal opportunity. This does not mean that every student receives the same services or accommodations. Each student must be considered as an individual.

## **ASSURANCES**

Section 504 regulations concerning provision of FAPE closely mirror the procedural requirements of special education. Students being considered for Section 504 services must be referred, evaluated, and provided services in accordance with Section 504 regulations. The school has the responsibility to provide written assurance of nondiscrimination and have a

Section 504 process in place. Each building must identify a Section Supervisor of Academic Progress , generally the Supervisor of Academic Progress, who works closely with the Director of Academic Progress to assure compliance and appropriate services for all students. In all required Section 504 notices, both the School Leader (or designee) and building coordinator should be identified by name, address, and phone number.

## **PROCEDURAL REQUIREMENTS**

### ***Identification***

The first responsibility of schools under Section 504 is to identify and locate students needing service. The process can be coordinated with the school's special education child-find process. At least annually the school must provide notice of the opportunity for referrals in (a) school forms; (b) school publications; and (c) mass media advertisements. Evidence of this annual notification must be documented to ensure compliance. Students who may be disabled under Section 504 can be referred by a concerned teacher, administrator, parent/guardian/student, or private/public agency. The student may need accommodations or related services in order to equally participate in the school program.

Possible indicators of eligibility under Section 504 include, but are not limited to, the following

- A parent/guardian/student frequently expresses concern about the student's performance;
- Retention is being considered;
- Numerous suspensions occur;
- A student shows a pattern of not benefiting from instruction;
- A student returns to school after an accident or serious illness;
- A student is found not eligible for special education;
- A student has a chronic health condition;
- A student is in danger of dropping out of school;
- A student has been identified as having ADD/ADHD

When a student has an accident or is diagnosed with a serious illness, an immediate referral may be made for evaluation and possible services. When instructional success is the concern, the school must attempt to accommodate the student's need through differentiated or remedial instruction and intervention. A confidential file must be created for the student where data related to remediation and intervention should be recorded. Many possible 504 problems can be

resolved at this level. Just as with special\_education, the least restrictive service necessary to appropriately meet the student's needs is the aim.

***Section 504 is a tool for student success when lesser interventions are not successful.***

If, after receiving targeted intervention, a student continues to experience difficulty, the teacher should refer the child to the RTI team. This team should consist of the Supervisor of Academic Progress, the student's general education teacher, and another person familiar to the student. All members of the team must be persons knowledgeable about the student's (a) individual needs; (b) evaluation data; and (c) placement options. During this process, the team may recommend further intervention or accommodations within the classroom environment.

The team should meet on a regular basis to review documentation relating to the success of the intervention(s) and make one of the following determinations:

- (1) the student requires referral pursuant to neither Section 504 nor IDEA;
- (2) more information is needed before a referral is made;
- (3) a Section 504 referral is required where the student is suspected of having a disability that does not require special education services; and
- (4) an IDEA referral is required where the student is suspected of having a disability that necessitates special education services.

***Referral***

When the decision is made to initiate a Section 504 referral, the parent/guardian/students and/or guardians must be notified. Parent/guardian/students should already be aware of the intervention efforts of the RTI team. A Section 504 Referral Form should be completed by the student's teachers with input from others who work with the student, including the parent/guardian/student.

When completing the form, consider the following guidelines:

- Do not label the disorder. Many conditions require a medical professional for diagnosis.
- Detail the observable characteristics (e.g., the child is distracted by classroom noises, the student refuses to comply with teacher requests 75% of the time) rather than labeling the characteristic

(e.g., distractible, rude). This will help the team identify and rate the concerns listed.

- Do not recommend medical procedures and evaluations.
- Document all concerns completely and professionally.
- Whenever possible, state in measurable terms and provide supporting data or documentation of the concern.

Once a referral is made, an evaluation must follow within a reasonable period of time from parent/guardian/student's consent unless there is no reasonable basis to suspect a disability. If the school elects not to evaluate a referred student, prior written notice must be provided to the parent/guardian/students giving them the opportunity to challenge the decision pursuant to Section 504 procedure. If a parent/guardian/student refuses to grant permission for an initial evaluation, the school may only evaluate the student by initiating a due process hearing and getting an order from an independent hearing officer.

### ***Evaluation***

The evaluation for determining Section 504 eligibility is based on:

- the type of suspected disability,
- the impact of the disability in the educational environment, and
- the type of services or accommodations that may be needed.

There are no specific evaluation requirements for Section 504; however, the evaluation must be sufficient to accurately and completely assess the nature and extent of the disability and the impact of the disability on a specific major life activity. This includes ensuring that the evaluation methods and materials are (a) in the native language of the student; (b) nondiscriminatory; and (c) empirically appropriate to test for the suspected disabilities.

Possible sources of existing evaluation information include, but are not limited to:

- Current psycho-educational evaluations;
- Standardized achievement data;
- Curriculum-based assessments;
- Medical information;
- Grades;
- Attendance records;
- Discipline records;
- Teacher or parent/guardian/student observation notes.

Be sure that all information is current, accurate, and addresses all areas of the learning process, including adaptive behavior. It is appropriate for school personnel to make inquiries of medical and other personnel if the information submitted is unclear. Always ask the parent/guardian/student to provide written permission for an exchange of information.

### ***Section 504 Committee Meeting***

When the evaluation is completed, a Section 504 meeting must be convened. There is no mandate concerning who must participate on this committee but persons who have knowledge of the student should be included. The Supervisor of Academic Progress and general education teacher should work with the student so he/she is in attendance. If the student is 18 years of age or older, he/she must attend. Notification of the meeting must be distributed in writing, and the parent/guardian/student must receive written notice. Include a notice of procedural safeguards with the notice.

The meeting should be held at an agreeable time for all. The Supervisor of Academic Progress should have the paperwork prepared in advance, and the Supervisor of Academic Progress or his/her designee should take notes. The parent/guardian/student should again be offered a copy of Section 504 parent/guardian/student Rights. The Supervisor of Academic Progress should explain the rights to the parent/guardian/student/guardian. During the meeting, encourage parent/guardian and student to be active participants, with opportunities to share information and express their opinions and thoughts.

### ***Eligibility***

The first task of the meeting is to review the evaluation information, which includes all information submitted to the committee. The committee compares the information presented with the Section 504 definition of a person with a disability. An individual may have a disability if he/she:

1. Has a physical or mental impairment which substantially limits one or more major life activity. The term does not cover children primarily disadvantaged by cultural, environmental, or economic factors.
  - Section 504 defines 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, genitor-urinary, lymphatic, and endocrine systems,
- any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, specific learning disability.”

2. Has a record or history of such an impairment (e.g., a student with a learning disability who is no longer eligible or has been misclassified to receive special education under IDEA; a student in recovery from drug abuse).

3. Is regarded as having such impairment. A person can be found eligible under this section if he/she:

- Has a physical or mental impairment that does not substantially limit a major life activity but is treated by persons in the district as having such a limitation (e.g., a student who has scarring or walks with a limp);
- Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment (e.g., a student who is obese); or
- Has no physical or mental impairment but is treated by persons in the district as having such impairment (e.g., a student who tests positive for HIV virus but has no physical effects).

Note: the last two factors come into play only when there is a “record” or “history” of an impairment which has resulted in discrimination. This rarely occurs in school situations.

**In addition to the presence of a disability, the condition must “substantially limit” one or**

**more major life functions.** Substantial limitation necessitates a material effect on one's ability to perform a major life activity as opposed to a minor limitation. Under the ADA, substantial limitation is defined as an inability to perform a major life activity that the average person in the general population can perform. Also note that a student does not have a disability under the ADA simply because the student's impairment keeps the student from reaching his/her potential.

Major life functions include but are not limited to self-care, walking, seeing, breathing, learning, performing manual tasks, hearing, speaking, and working. When a condition does not substantially limit a major life activity or impact education, the individual does not qualify for services under Section 504. In such determinations, the committee may wish to discuss possible accommodations outside the Section 504 process or refer the child for additional support through building-based avenues.

Disabling conditions include the following:

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|---------------------------|---------------------------------------|-----------------------------|
| (1) AIDS;                 | (2) Allergies;                        | (3) Asthma;                 |
| (4) ADHD;                 | (5) Recovering Chemical Dependency;   |                             |
| (6) Congenital Defects;   |                                       | (7) Diabetes;               |
| (8) Formerly Disabled;    | (9) Hepatitis B;                      | (10) Hemophilia;            |
| (11) Obesity;             | (12) Pregnancy with Medical Problems; |                             |
| (13) Schizophrenia;       | (14) Retinitis-Pigmentosa;            | (15) Temporary Conditions;  |
| (16) Tourette's syndrome; |                                       | (17) Tuberculosis;          |
| (18) Dwarfism;            | (19) Epilepsy;                        | (20) Communicable Diseases. |

The following are not disabling conditions:

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| (1) Homosexuality;   | (2) Bisexuality; | (3) Transvestism; |
| (4) Transsexualism;  | (5) Voyeurism;   |                   |
| (6) Gender-identity disorders not resulting from physical impairments;                 |                  |                   |
| (7) Compulsive gambling;   |                  | (8) Kleptomania;  |
| (9) Pyromania;   |                  |                   |
| (10) Psychoactive substance-use disorders resulting from current illegal use of drugs. |                  |                   |

As a final note, a student must be "otherwise qualified" to be considered eligible for Section 504. The most common "otherwise qualified" factors are (1) age; and (2) legal settlement. The student

must be old or young enough to attend public school and must have legal settlement in the district to be considered “otherwise qualified”.

### *Services*

If the committee determines that a student is disabled, the committee must determine what services or accommodations are required to enable the student to receive an appropriate education. ***Services are provided to give equal access, not as extra support for a student.*** The Section 504 committee must determine what services and accommodations are necessary to provide the student an equal opportunity. Equal does not mean the same. Every case must be considered individually. Decisions concerning Section 504 eligibility must be documented in the student’s confidential file, and if services are provided, eligibility and the plan for services should be reviewed periodically.

The student should be reevaluated at least every three years but no more than once a year (unless parent/guardian/student provides permission for deviation).

In addition, the committee should consider reevaluation when:

- (a) the student transitions to a new school;
- (b) the student’s behavior/academic achievement shifts; and
- (c) if the committee believes that the student is no longer disabled.

The Section 504 committee should develop a written 504 plan within 30 days of the student eligibility determination. The plan should provide a description of the student’s disability. Each area of the student’s difficulty should be identified in the plan. The plan should also include specific services or accommodations the student will receive as well as how the proposed plan will be evaluated. Evaluation data must be observable and measurable.

Once all accommodations are determined, the team must decide when the plan will be reviewed. This should occur periodically, and at least annually. Parent/guardian/student are asked to give consent for the identified services and should be offered an explanation for any or all of the documentation.

The Supervisor of Academic Progress is then responsible for informing all staff who work with the student of the services/accommodations that are required under the Accommodation Plan. It is best practice to have teachers and staff review the information, either in writing or verbally, and provide written verification that indicates that they have been informed. Further, the SOP

should periodically check on the child and monitor the effectiveness of the Section 504 plan. The plan can be reviewed and/or revised at any time via the Section 504 committee.