



Educator's Quick Reference for Section 504 Building on the Basics

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Helpful Resources:

- **Department of Education Resources:**
<http://www2.ed.gov/about/offices/list/ocr/504faq.html#interrelationship>
<http://www2.ed.gov/about/offices/list/ocr/ga-disability.html>
- **Council of Educators for Students with Disabilities:**
http://www.504idea.org/Council_Of_Educators/Welcome.html
- **ESC20:** <http://portal.esc20.net/portal/page/portal/esc20public/504>

The Basics of Section 504

What is Section 504?

Section 504 began as part of the Rehabilitation Act of 1973. It is a mandatory civil rights law that prohibits discrimination against people with disabilities in public and private sectors that accept federal funding. This area of federal law is also upheld by the American's with Disabilities Act (ADA) passed in 1990. The Amendments Act of the ADA (ADAAA) in 2008 served to broaden the scope of this civil rights law. Section 504 & ADAAA are often used interchangeably as both refer to the primary purpose of eliminating disability discrimination.

Because public and charter schools accept federal funding, they are required to abide by Section 504 and provide reasonable accommodations to students who meet eligibility standards. Unlike IDEA, schools receive no additional federal dollars to support the needs and accommodations that are determined to be appropriate for students within Section 504. Under the ADAAA revisions in 2008, Congress broadened the definition of disability within Section 504 to allow for more inclusive coverage and qualification.

Who is protected by Section 504?

- Students with a physical or mental impairment that substantially limits one or more major life activities. Episodic conditions and conditions in remission would meet this standard if the impairment would cause substantial limitation when in an active phase
- Students with a record of physical or mental impairment.
- Students regarded as having a physical or mental impairment.

Students in all three categories may be considered eligible for the anti-discrimination protections and rights afforded under Section 504. However, only those students in the first category where a physical or mental impairment has been determined to cause substantial limitation to a major life activity would be considered for a possible Accommodation Plan.

The Process



Section 504 outlines that students with disabilities be given an equal educational opportunity. This is commonly defined as the provision of a documented plan that includes accommodations or services that level the playing field so Section 504 students can access curriculum as adequately as non-disabled peers.

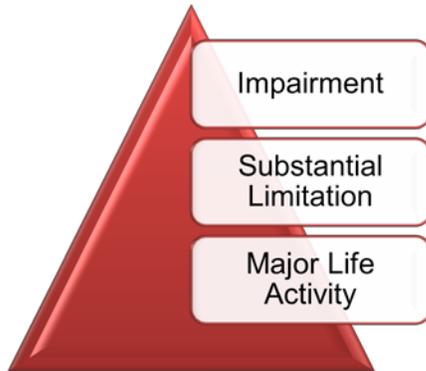
Referral & Response to Intervention (RtI)

Similar to IDEA, schools have a Child Find obligation under Section 504 as well. Schools are called to locate and identify students with disabilities that may be eligible for Section 504 services. School districts must maintain a process for Section 504 student referral and evaluation, and must post notifications to inform parents and the public of these obligations. Many schools have made substantial gains in designing and implementing tiered systems of intervention and progress monitoring for at-risk students. Participation in student support or Response to Intervention systems does not exclude students from Section 504 referral, even if a student is successful given the intervening services. Utilization of RtI should not DELAY, DENY, or PREVENT students from access to Section 504 evaluation.

Referral to Section 504 should occur when a school suspects a disability is present (or has knowledge a disability has been identified) **and** the student may be in need of services due to the disability.

Section 504 Evaluation

Defining the Disability



According to the 34 CFR 104.3 a **physical or mental impairment** means (A) 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 (B) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The Evaluation process must always begin with written informed consent from the parent. A parent must consent to a Section 504 evaluation prior to any discussion, recommendation, or provision of services. Evaluation typically refers to a collection and analysis of data from a variety of sources. The evaluation process within Section 504 can include formal and informal sources of data. Formal testing, such as that done under IDEA, is not required for Section 504. Dyslexia evaluations do include standards for formal assessment data. Common data sources considered in the evaluation may include: academic grades, disciplinary reports, nurse/medical/health information, second language acquisition, teacher observations and input, state standardized assessment profiles, and parent input. The evaluation conducted by the school is provided at no expense to the parent.

The primary purpose of the evaluation is to determine three components of eligibility:

- Does the student have a physical or mental impairment?
- Does the impairment cause substantial limitation?
- Does the substantial limitation occur in one or more major life activities?

504 Committee

The Section 504 committee is responsible for decisions involving identification, evaluation, placement, FAPE, eligibility decisions, 504 plans, annual reviews, revisions of plans, & addressing lack of progress. The committee must include persons knowledgeable about the child, evaluation data, and placement options.

Substantial Limitation

Section 504 has not provided a concrete definition of substantial limitation. Each Local Education Agency is tasked with determining what constitutes a substantial limitation in each individual student evaluation. General guidance interprets substantial limitation to occur when the disabling condition makes a major life activity more burdensome for the student when compared to the functioning of peers. Successful performance does not “rule out” the presence of substantial limitation. The amount of time and effort it takes a student to achieve the final outcome must be considered in the Section 504 evaluation.

Major Life Activity

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. This also includes major bodily functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Mitigating Measures

Students are eligible under Section 504 if they have a physical or mental impairment that **WOULD** substantially limit them in a major life activity **DESPITE** taking advantage of mitigating measures. Mitigating measures are strategies or supports utilized by the person with a disability. A student with a disability cannot be denied non-discriminatory protections under Section 504 because of a mitigating measure.

Common mitigating measures include:

Medication, medical supplies, equipment, or appliances, low-vision devices, prosthetics, hearing aids, cochlear implants, mobility devices, oxygen therapy equipment and supplies, use of assistive technology, informal accommodations, compensatory skills, interventions, learned behavioral or adaptive neurological modifications

Ordinary eyeglasses or contact lenses are **exceptions.*

Accommodations & Service Plans

Determination of Services



Beneficial effects of mitigating measures are **NOT** considered in evaluations for 504 eligibility. Eligibility determines qualification for anti-discriminatory protection and rights. Beneficial effects of mitigating measures **ARE** considered in determining whether the student needs **SERVICES**.

Accommodation vs. Modification

Accommodations provided under Section 504 are meant to “level the playing field” for the student with a disability, not to give a student an unfair advantage over non-disabled peers. Section 504 accommodations are determined individually based on need by the Section 504 committee and documented within a written plan. Accommodations may involve changes in the method information is presented to a student, changes in the method a student is allowed to provide a response, or changes that affect assessment of knowledge. Modifications involve changes to the curriculum presented, and are not typically used in Section 504 plans. When a Section 504 eligible student demonstrates behavioral difficulty, one consideration for the service plan may be to conduct a Functional Behavioral Assessment in order to construct a Behavior Intervention Plan.

Individual Health Plan

Every student with a health plan due to a medical condition may not necessarily need a Section 504 Plan. However, OCR has found that health plans alone are not in keeping with Section 504 standards, rights, & safeguards for anti-discrimination. In order to determine if a student with a current IHP may be in need of a Section 504 evaluation and service plan, the committee should consider the frequency, complexity, intensity, and safety risks associated with the health services. Committees should determine if the student has a need for accommodations in other settings.

Dyslexia

According to the Texas Education Code, Dyslexia is a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity. Students undergoing school based Dyslexia evaluation should do so within the Section 504 framework.

Manifestation Determination

Students eligible for Section 504 receive the right to manifestation determination when a disciplinary change of placement is recommended. Change of placement can be removal from the normal placement for more than ten consecutive days, or the accumulation of more than ten days in short-term removals that become a “pattern of exclusion.” In Section 504, a reevaluation is required prior to any change of placement in order to conduct a manifestation determination. The Section 504 committee must determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability, and if the conduct in question was the direct result of the school’s failure to implement the 504 plan. If both essential questions can be answered “**NO**,” then removal proceeds as it would for other nondisabled students. If the answer to **either** question is “**YES**,” the student cannot be removed from the current placement.

Review

Once a student is eligible under Section 504 a reevaluation must be conducted on a periodic basis. “Periodic reevaluation” is not defined in regulations, but school districts may use IDEA procedures as one way of meeting this requirement. Under IDEA, reevaluations must be conducted at least every three years and more often if needed. Although there is no “expiration date” for a 504 plan, periodic reevaluation ensures that the student’s needs are being adequately addressed. Annual reviews are not required, but are highly recommended to review student progress and determine the most appropriate accommodations and services each school year.

Reevaluations must occur before any significant change in placement. According to OCR, this would include: transferring a student from one type of program to another, terminating or significantly reducing a related service, or excluding a student from the educational program beyond 10 days.