

What is Section 504?

INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 (commonly referred to as “504”) prohibits discrimination against students on the basis of their disability. The United States Department of Education has issued revisions to the requirements of Section 504 with emphasis on procedural safeguards and other protections that would present discrimination against individuals with disabilities, effective March, 2011.

The purpose of this manual is to inform School District employees about Section 504 and to provide sample procedures and forms that have been developed to comply with the requirements of Section 504. This manual reflects the commitment of all schools in Wayne County to address the educational needs of ALL children.

School district administrators and employees should become knowledgeable about the local school district procedures concerning Section 504, with a particular emphasis on parent and student rights.

If you have questions regarding this toolkit or Section 504, please contact:

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If you have Section 504 questions concerning either current students or prospective students, please contact the Office of the Superintendent for your school district to locate your local 504 Coordinator.

DISTRICT SECTION 504 COORDINATOR

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734-379-7100

Section 504 Overview

Section 504 of the Rehabilitation Act of 1973 is a federal law which prohibits discrimination against persons with disabilities. The law provides:

No otherwise qualified individual with a disability...shall solely by reason of her of 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....

29 U. S. C. § 794

Section 504 is based on the principle that students with disabilities shall not be denied access to educational facilities, programs and opportunities on the basis of their disability.

For a student to qualify for Section 504 protection, the student must: **(1) have a mental or physical impairment (2) which substantially limits (3) one or more major life activities.** All three criteria must be met before the student is eligible for Section 504 protection.

Section 504 requires that the School District offer a Free Appropriate Public Education (FAPE) to each eligible student who has a physical or mental impairment that substantially limits a major life activity. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services that are designed to meet the student's individual educational needs as adequately as the needs of non-disabled students, and in accordance with Section 504 requirements pertaining to educational setting, evaluation, placement and procedural safeguards. The FAPE obligation extends to all students described in this paragraph, regardless of the nature or severity of their disability.

Definition of Terms: Section 504

Free Appropriate Public Education (FAPE) – A free appropriate public education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met.

Individual with a disability – An individual with a disability is a person who:

1. Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
2. Has a record of such impairment; or,
3. Is regarded as having such impairment.

Major Life Activities – A major life activity includes, but is not limited to functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Major life activities also include standing, lifting, bending, reading, concentrating, thinking and communicating. The term 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.

Physical or mental impairment – a physical or mental impairment is:

1. 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; genitourinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder such as cognitive impairment, organic brain syndrome, emotional or mental illness and specific learning disabilities.

Substantially Limits – A student who has a physical or mental impairment that *substantially limits* a major life activity may be found to have a disability under Section 504. This determination is made on a case-by-case basis.

Except for ordinary eye glasses or contact lenses, the effects of mitigating measures (*e.g.*, medications, prosthetics, hearing aids, *etc.*) may not be considered when assessing whether a student has an impairment that substantially limits a major life activity. To the extent feasible, only the impact the impairment has on a major life activity without mitigating measure may be considered when determining whether the disability substantially limits a major life activity.

If a student has an impairment that is episodic or in remission, the School District must consider whether the impairment, *when active*, would substantially limit a major life activity. If so, then the student meets the definition of a student with a disability.

Policy of Non-Discrimination

It is the responsibility of the local school district and Board of Education to adopt a policy of non-discrimination such that no otherwise qualified student with a disability shall be excluded from participation in, denied the benefits of, or be subjected to discrimination solely on the basis of his/her disability in any program or activity conducted by the school district.

It is the responsibility of the local school district and Board of Education to identify, evaluate and provide a free appropriate public education to each qualified student with a disability within its jurisdiction regardless of the nature or severity of the disability.

A grievance procedure must be established for addressing complaints of discrimination on the basis of disability. A description of this procedure and other relevant information may be obtained by contacting the school district's Section 504 Coordinator or office of the Superintendent.

The school district may appoint a designee to serve as the District Section 504 Coordinator. The building level administrator is ultimately responsible for the implementation of plans by the appropriate staff who work with the student.

Response to Intervention and Student Study Team Strategies

Many schools are using Response to Intervention (RtI) as a systematic procedure to provide supplemental and individualized instruction to address needs in foundational basic skills. Student progress is closely monitored with adjustments in instructional interventions based on student learning rates. Parents must be informed of the data used to measure student progress, the strategies used with their child, and their rights to request an evaluation at any time.

Some schools utilize a Student Study Team process in which individualized strategies are offered to the parents and teachers of students who are experiencing difficulties in school. Classrooms are naturally multi-tiered and multi-skilled environments. The implementation of personalized strategies helps teachers to be more intentional in the possible instructional and behavioral methodologies and expectations, and, by so doing: (1) Assists teachers with students who present a wide variety of educational and behavioral needs and; (2) Strengthens educational opportunities within the general education program.

It must be emphasized that the RtI or Student Study Team procedures are **not** intended to impede any necessary referrals for consideration of eligibility under the Individuals with Disabilities Education Act (IDEA) or Section 504. If, at any time, a teacher, counselor, administrator, or other professional staff member suspects that the student's difficulties are attributable to a disability, the student should be referred for an evaluation. If a parent/guardian at any time requests an evaluation, the School District must either honor that request or notify the parent/guardian of his/her due process rights and the IDEA, or Section 504, as applicable.

Parental Rights

Section 504 guarantees certain rights to parents of students with disabilities. The intent of these procedural protections is to keep the parent/guardian fully informed concerning educational decisions about their child, and to inform the parent/guardian of their rights if they disagree with any of these decisions. At age 18, these rights transfer to the student. The Notification of Parent Rights (Form H) should be used every time you plan to meet for purposes of Section 504 evaluation, plan development, or change in programs. Use the Parent Invitation to Section 504 Meeting (Form G) to document your invitation to meetings.

Suspension and Expulsion of Students Served Under Section 504

Students who are eligible under Section 504 have certain additional protections when charged with a violation of the Code of Student Conduct which may result in a suspension or expulsion. Similar

to suspension or expulsion of a student with a disability under the IDEA, it is necessary to conduct a manifestation determination review for a Section 504 disabled student when:

- The suspension or expulsion will be for more than ten (10) consecutive school days. As is true under IDEA, a suspension/expulsion of more than ten (10) consecutive days constitutes a significant change in placement and requires the School District to determine if the cause of the behavior is the disability identified in the student's Section 504 plan.
- A series of suspensions that total more than ten (10) school days in a school year may create a pattern of exclusion. If cumulative suspensions/expulsions for a student on a Section 504 Plan total more than ten (10) school days in a school year, it must be determined if a significant placement change has occurred. This decision is made 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 District must conduct a manifestation determination meeting before further suspensions or expulsions occur. The Office for Civil Rights has identified some of the key factors in determining the existence of a pattern of exclusion; these include the length of each suspension, the proximity of one suspension to another, the similar or dissimilar nature of the behavior, and the total amount of time the student is excluded from school.

Section 504 allows a student to be disciplined, without going through the manifestation determination review process, where the student is charged with and found to be currently engaging in the illegal use of drugs or alcohol, in violation of the School Code.

The manifestation determination process will determine if the violation was due to the student's disability. The review must also consider the appropriateness of the student's plan of supports and services under Section 504. Appropriate actions should include consideration for a referral for IDEA evaluation when the manifestation determines the behavior is likely related to the disability. In those situations in which the student committed an infraction leading to state mandated removal from school, the review process must consider the obligations to provide FAPE under IDEA.

In situations in which the manifestation determination process determines the behavior is NOT related to the disability, the student is to be given the same treatment or sanctions as the nondisabled students, consistent with the school district Code of Student Conduct and local district policy. The provisions of FAPE do not apply during the period of discipline or removal from school. The student may apply for reinstatement following the same policy as nondisabled peers.

Complaints & Grievances

A person who believes that he/she has been discriminated against by the School District on the basis of his/her disability may pursue a grievance/complaint through School District's Grievance/Complaint Procedure (Form M).

Grievance and Impartial Due Process Procedures must include procedural safeguards notification to parents. A parent may request an impartial due process hearing at any time and should be provided notice of this right. While the school district must also offer a process for addressing complaints and grievances, the parent should not be delayed or denied in their exercise of due process.

The complaint or grievance process is outlined below:

1. The grievance process starts with a meeting at the building level to review concerns and consider possible immediate solutions. The meeting should occur in a reasonable timeframe. The building administrator should meet with parent to discuss concerns and attempt to resolve the issues. Suggested meeting participants may include: Parent, Staff involved with the student's 504 plan, and Building Administrator. The meeting outcomes should be summarized and shared with the parent and District Section 504 Coordinator.
2. If the issue does not reach satisfactory resolution, parent should file a written grievance with the District 504 Coordinator.
3. The District Section 504 Coordinator will investigate the concern and prepare a written summary of findings and recommendations.
4. Upon parent and district review of recommendations, the parent and district, by mutual agreement, may enter a facilitation meeting to reconcile any concerns that cannot be resolved through the recommended course of action.
5. If the issue does not reach satisfactory resolution, the parent may request an impartial due process hearing through the District Section 504 Coordinator or office of the Superintendent.
6. An impartial hearing officer will be appointed by the school district.
7. The impartial hearing officer will conduct an evaluation and make written recommendations.
8. If the due process hearing does not resolve the issue, the parent may file a complaint with the OCR.

Office for Civil Rights
Cleveland, Ohio
US Dept of Education
600 Superior Avenue East, Suite 750
Cleveland, Ohio 44114

Impartial Due Process Hearings

Parents or persons in a parental relationship who disagree with the identification, evaluation, placement or provision of a free appropriate public education for a student with a disability have

the right to request an impartial due process hearing. Request for a Section 504 due process hearing must be made to the School District Section 504 Coordinator. Upon receipt of such a request, the necessary arrangements will be made by the School District, including the selection of a hearing officer. A hearing may not be conducted by a person who is an employee of the School District, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. For assistance in identifying an appropriate hearing officer, the district may begin by contacting legal counsel. See the Sample Section 504 Due Process Hearing Request Form (Form N).

Any party to a hearing has the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
- Request that the hearing officer bar as evidence any evaluation or recommendation completed but not disclosed to the other party at least five business days prior to the hearing;
- Obtain a written or electronic verbatim record of the hearing or obtain alternate forms of the verbatim record to be provided in the parent's native language; and
- Obtain written or electronic findings of fact and decisions.

The School District will adhere to the following timeframes in the event of a request for a due process hearing:

- A hearing will be scheduled not less than fifteen (15), nor more than thirty (30) calendar days following receipt of a written request from the parent.
- The Hearing Officer will, not later than thirty (30) calendar days after the hearing, do both of the following:
 - Reach a final decision regarding the matter; and
 - Send a written copy of the decision to each party.
- In the absence of an appeal, the decision of the Hearing Officer will be implemented by the School District within fifteen (15) calendar days of the School District's receipt of the decision.