

The Section 504 Process

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The Section 504 Process consists of four steps: (1) Referral; (2) Evaluation; (3) Eligibility Determination; and (4) the Section 504 Plan. For eligible students with a plan, the district must also provide regular reviews of the plan, reviews to support changes in program and/or transitions across grade levels, and conduct re-determination evaluations.

The referral to the school may be made by a parent, staff member, or the student. The school district must conduct a timely evaluation to determine the student's eligibility under Section 504. From the date a referral request is received, a time frame of thirty (30) school days is recommended for completion of the identification, evaluation, and, if necessary, development of a Section 504 Plan for each student who is referred pursuant to the School District's Section 504 policy.

The determination of eligibility is based on the evaluation and is a team decision that includes persons knowledgeable of the student, the evaluation findings, and the meaning of the data. If determined to be eligible, an appropriate plan is developed and implemented. The school district will be responsible for the implementation of the plan and to provide regular review of the appropriateness of the plan. A Section 504 plan may be revised or discontinued at anytime. The plan should be reviewed at least annually and updated, as needed, based on changes in student status and the context at school. A Section 504 plan review is also necessary when there is a change in program, building assignment, or staff. A 504 plan may be discontinued with proper notice, evaluation and review.

Referral

A student who, because of a suspected mental or physical impairment, is believed to be in need of accommodations or educational services under Section 504, may be formally referred by a parent, teacher, other certified school employee(s), or the adult aged student himself/herself. The referral process involves proper documentation of the presenting concerns, notice to parents, consent, and notice of procedural safeguards. Parents are to be provided with copies of referral and consent forms and given the opportunity for clarification of terms, timelines, and procedural safeguards.

Evaluation

A determination of Section 504 eligibility (*i.e.*, a physical or mental impairment that substantially limits a major life activity within the school environment) must be based on a multi-source evaluation. The evaluation procedures to be followed may, but need not, include all of those which are followed in evaluating students under the Individuals with Disabilities Education Act ("IDEA"). The nature and extent of the information needed to make a Section 504 eligibility decision is determined on a case-by-case basis by a group of persons knowledgeable about the student and the meaning of evaluation data.

The evaluation process should begin with a thorough review of the student's educational records. Evaluation standards require that assessments are (1) used for the purposes they were developed; (2) administered by qualified personnel; (3) tailored to assess the specific area of concern and not to provide a global ability score; and (4) selected and administered to ensure the test accurately reflects the student's abilities rather than reflecting the impairment. The following sources of information may be considered as appropriate evaluation methods:

- Observations of the student
- Standardized tests or other assessments by school staff
- Parent/Student/Teacher interviews
- Behavior rating scales or other checklists
- Pertinent medical information
- Information provided by the parent

If a student is suspected of having a physical impairment and the School District does not already have a current diagnosis documented by a physician, input from a physician may be sought as part of the evaluation process. **Please note that a diagnosis of a physical or mental impairment does not, in and of itself, determine eligibility under Section 504.** As mentioned above, there must also be separate findings that the impairment substantially limits a major life activity.

Medical evaluations are NOT required under Section 504. The school district may NOT require the parent to provide medical information or evaluation. If the evaluation team determines that a medical evaluation is necessary, the district must pay for it. *Letter to Veir, 20 IDELR 864 (OCR, 1993).*

Eligibility Determination

The eligibility determination should be made by a group of persons knowledgeable about the student, the meaning of the evaluation data and placement options. The school should form a team to conduct the evaluation, determine eligibility, and develop a plan for the eligible student. Appropriate team members may include the classroom teacher, instructional resource teachers and appropriate related services staff, if needed. Use the Parent Invitation to Section 504 meeting (Form G), the Notification of Parent Rights (Form H), and the Parent Consent for Section 504 Evaluation (Form I). Additional considerations are offered to assist the district in making appropriate eligibility determinations.

Substantial Limitation: The Office for Civil Rights (OCR) does not endorse a single formula or scale that measures substantial limitation. *See Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities (March 2009).* The determination must be made on a case by case basis with respect to the individual student. The standard for determining a substantial limitation is broad and typically references access to participate and to fulfill the expectations of the non-disabled students.

Major Life Activities: Some individuals interpret this to mean that a student must have a substantial limitation in the area of learning to be eligible under Section 504 and use this criteria to exclude students from eligibility. This would be an oversimplified understanding of this provision in the law. A student may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind for them to access learning. *Letter to McKEthan, 23 IDELR 504 (OCR 1995)*. Physical or mental impairments may substantially limit major life activities other than learning that interfere with the student's ability to access and benefit from the school's programs and activities.

Mitigating Factors: In the past, school districts were allowed to consider a student's use of mitigating measures, such as medications, in determining if the impairment substantially limited a major life activity. Since revisions in the law that occurred in 2009, such factors cannot be considered when making disability determination. The determination of eligibility and the plan must be developed independent of the use of mitigating measures. Consider how the student would access and benefit from instruction were the mitigating factors not available.

Episodic or In Remission Disabilities: An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A *temporary* injury or illness of a duration less than six months is not regarded as an impairment that substantially limits a major life activity.

Section 504 Is NOT Interchangeable with IDEA: Section 504 eligibility is NOT automatically bestowed on a student who is referred for a special education evaluation and who is subsequently determined not IDEA eligible. *Letter to Veir, 20 IDELR 864 (OCR 1993)*. Parents may not avoid having a child labeled as special education by "opting" for a Section 504 plan. *Letter to McKethan, 25 IDELR 295 (OCR 1996)*. Similarly, a district does not have the flexibility to opt to provide Section 504 services when the student is IDEA eligible. *Yankton Sch. Dist, v. Shramm, 24 IDELR 704 (8th Cir. 1, 1996)*.

No Automatic Eligibility: A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. *See Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities (March 2009)*.

Access NOT Advantage: Section 504 is not designed to improve grades, raise test scores, or reduce homework responsibilities. If a student is only seeking test accommodation, it is likely the student does not need a Section 504 plan.

Prevent Over-Identification: Recognize there are other factors that could adversely affect student learning, such as socioeconomic status, educational disadvantage, poor

early instruction, difficult family situation, gang involvement, truancy, or limited English proficiency. Invest in training of staff to learn about Section 504. Explain to staff that it can be a violation to identify a student as a student with a disability when in fact the difficulty stems from other factors.

Prevent Misconceptions Leading to Violations: It is a misconception to assume that general education accommodations supplant the need for Section 504 eligibility or services. Another misconception is that a student must fail in all classes to be eligible. It is important to recognize that a student who continues to struggle, with intervention, may indeed have a substantial limitation. Also, the courses may require additional skills that are impacted by the student's impairment.

Section 504 Plan

Where a student is found to be eligible, a Section 504 Plan will be developed. The building Section 504 Team, which includes the parents, will be responsible for determining the special accommodations and services that are needed to ensure that the student receives a free appropriate education. The Plan will specify how services will be provided and by whom. See Form J for the Section 504 Plan.

The Section 504 Plan shall be signed by the Building Administrator. Prior to implementation, a copy of the Plan shall be provided to the parent(s)/guardian(s), which indicated the School District's intent to implement the plan. Parent must always be provided a copy of the Notification of Parental Rights (Form H).

If a Section 504 Plan is developed for a student, only school personnel with implementation responsibilities shall be informed of the existence and particulars of the plan. Staff should be informed on the contents of the plan when the plan is created, revised, and at points of transition, including transfers between buildings, or changes in schedule, staff, or program.

Annual Review

The teacher or other person(s) designated by the Section 504 Team shall monitor the student's progress and the effectiveness of the student's plan. The teacher or other designated person will meet with the parent(s) at least annually to determine whether the Section 504 Plan continues to be appropriate or whether any changes are thought to be necessary. A Section 504 team meeting will be convened at any time to review the changes in student need or other appropriate concerns.

Reevaluation

A multi-source evaluation should be completed periodically to re-determine eligibility under Section 504 and/or before any significant changes are made in the Section 504 Plan. A school district shall not require outside evaluations or examinations as a condition of eligibility or plan continuance. Medical evaluations are NOT required under Section 504. The school district may NOT require the parent to provide medical information or evaluation. If the evaluation team

determines that a medical evaluation is necessary, the district must pay for it. *Letter to Veir, 20 IDELR 864 (OCR, 1993).*