

504 FAQ's

FREQUENTLY ASKED QUESTIONS

Who is OCR?

OCR stands for the Office for Civil Rights, a federal agency that oversees the implementation of Section 504 and other anti-discrimination statutes. In its own words, "OCR receives complaints from parents, students or advocates, conducts agency-initiated compliance reviews, and provides technical assistance to school districts, parents or advocates."

What is the difference between special education under IDEA and 504?

Under IDEA, only children who have certain specific types of disabilities and who, because of those conditions, need special education, are eligible for services. The Section 504 definition of a disability is much broader. To the extent that a student with a disability requires special education, the student's needs should be met through the School District's offer of an IBP. IDEA is a comprehensive statute accompanied by funding and will provide students with more rights and the School District with funding.

When students are in the RTI process, should we also be considering if the student qualifies for a 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school and it is this School District's expectation that the RTI process be fully explored before students become eligible under 504 or IDEA. A general education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. If a team suspects a student has a disability, the team should consider referral for special education eligibility.

What documentation is needed to establish eligibility for Section 504?

The amount and type of information required is determined by the 504 team whose members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. For this reason, it is often helpful to have a psychologist or nurse participating in eligibility determinations.

Must the School District have a medical diagnosis in order to qualify a child for a 504?

The School District cannot require a parent to provide a medical diagnosis before it convenes a Section 504 process for a student. If the team determines a medical diagnosis is necessary for the team to determine eligibility and sufficient information exists to support that determination, then the School District would be obligated to secure such an evaluation.

If a parent presents a medical diagnosis from their child's doctor, the team must take the diagnosis into consideration along with other information. A physician's medical diagnosis alone is insufficient information to constitute a proper "evaluation" under Section 504, because the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In addition, the team must consider whether the medical diagnosis causes a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation.

How can the School District be responsible for collecting the documentation that a student has a disability?

Section 504, like IDEA, obligates the School District to find students with disabilities who are eligible for the protections of the law. It is always acceptable for an individual team to incorporate private information that a student or family brings in, but the team cannot require a family to provide certain information in order for the Section 504 process to be initiated.

Is 504 a safety net or for problems that are happening now? We have had people bringing forward health issues like an allergy to cleaning supplies or diabetes, however the issues are not affecting the student right now.

Section 504 requires the student to actually have a physical or mental impairment that substantially limits a major life activity. The revised law clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. To qualify under the episodic or in remission analysis, it seems the student must have been substantially limited at some point, even if the student is not currently limited. With the more expansive eligibility standard, it seems a student with diabetes will virtually always meet the three-part eligibility standard, but the student may not always require a Section 504 plan if the student doesn't require special education, related services, or regular education interventions. If such a student required a 504 plan, the plan might be as simple as providing the student with access to medication and snacks.

What about questionable diagnoses such as "vision tracking problems"?

The plain language of Section 504's regulations require the student to have a physical impairment or mental or psychological disorder. If an evaluator acknowledges some difficulties or problems, the team will need to determine if the data establishes a physical or mental impairment. Mental and psychological disorders are typically listed in the Diagnostic and Statistical Manual of Mental Disorders. If the team has a question regarding the legitimacy of a diagnosis, the team could include a psychologist or nurse who can assist in the determination.

What do we do when a student brings in a private psychological evaluation that indicates a student has low processing speed or working memory impairment and recommends a 504 plan based on that alone?

The results of an outside independent evaluation must be considered, but the weight to be given to the information is determined by the committee given the student's individual circumstances. If the team questions the information, the team should consider requesting the School District to complete additional evaluations in order to give the team the information it needs to make good decisions. Regardless, the impairment or diagnosed condition must substantially limit one or more major life activities. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation.

What should we do if the family brings in outside evaluations?

If a family brings in an outside evaluation and is seeking special education OR related services, it is a good idea to follow the IDEA eligibility process first in the event the student qualifies for an IEP. In some circumstances, it may be very clear from the outset that the student will not require special education, only regular education interventions, and therefore the referral can be made directly to the 504 process.

If students with diabetes are doing fine on a health plan, should we automatically convene the 504 process anyway?

It is likely that all school districts have students with health plans who are now 504-eligible given the broader definition of disability and expanded list of major life activities. In practice, there is often little difference between what a student will receive via a health plan and a Section 504 plan. The real difference is often in the process through which the plan is developed. If a question exists as to whether the plan is sufficient for the student, whether the team that prepared the plan was sufficient, or the parent or student makes a request, then the 504 team should be convened. When students' health plans are scheduled for a regular review, the Section 504 requirements should be considered.

What is the difference between a health plan and a 504 plan for purposes of standardized testing like the ACT?

Often, private testing companies, like the one that oversees ACT, require an IEP or Section 504 documentation for a student to receive accommodations.

If a student is not reading on grade level, is partially proficient on the CSAP, or qualifies for an ILP, is the student substantially limited in the major life activity of reading?

A student who is not experiencing success in the general education program may be eligible under Section 504. In order to be eligible, the student's physical or mental impairment must be the reason the student is substantially limited in his/her performance. It is important to

remember that school districts are expected to implement a number of general education interventions for students to help them learn and only must provide 504 plans for students with disabilities.

Who should attend the 504 meeting? All of the teachers or just select?

Decisions under Section 504 must be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. It is not required that all of the student's teachers attend and it is often very difficult to convene such a large group. It is important that the team has sufficient information to make the determinations before it, including the impact on the student's performance. Accordingly, at least one teacher should be expected to attend and attempt to bring in information from other teachers who do not attend the meeting.

If the student requires changes to the curriculum, why would the student not be referred for IDEA eligibility?

Usually, a student who requires curricular revisions will require special education and therefore should be referred for IDEA eligibility.

When would a 504 be used to prompt a change of placement?

All students with IEPs are also Section 504 eligible. For these students, the requirements of Section 504 are satisfied through the IEP process. Accordingly, a student who requires a specialized placement or change of placement will typically receive such a change through IDEA's IEP process; however, since Section 504 contains language about least restrictive environment and placement, we cannot rule out the possibility that a student could require a specialized placement under Section 504.

Doesn't 504 allow just accommodations and not services?

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. Since the Section 504 regulations specifically recognize that one way to meet Section 504's requirements for a free appropriate public education is to implement an IEP and IDEA brings funding, students who require significant services should meet eligibility for and be served through IDEA's IEP process.

When is an accommodation unreasonable?

Section 504 places different responsibilities on school districts than it does on postsecondary institutions. At the postsecondary level, institutions are only required to provide students with appropriate academic adjustments and auxiliary aids and services and are not required to make adjustments that would impose an undue burden.

School districts have a bigger obligation to provide a free appropriate public education to qualified students with disabilities. OCR has routinely said there is no "reasonableness" limitation on what school districts must provide. School districts must individualize accommodations to meet the needs of the particular student and provide the student with a disability an equal opportunity to benefit from public education.

This does not mean a student must receive every accommodation he/she requests, but rather must receive those accommodations that are necessary to prevent discrimination on the basis of disability. Cost alone will not be a reason to deny a student an accommodation. Under Section 504, modifications or accommodations can be simple, like providing a rest period during the day for students with chronic illnesses that impact the student's stamina or energy levels, accommodating for absences for doctor's appointments, allowing a student to take or be administered medications, recording lectures or classes, modifying testing procedures, or allowing a student to have a special seating assignment.

Are students able to use service animals as an accommodation on a Section 504 plan?

First, the team needs to remember to identify the student's needs and then consider those accommodations that are necessary and appropriate to address the student's needs. Neither IDEA nor Section 504 or the agencies that oversee them have published any guidance about service animals. The best source is the Americans with Disabilities Act which defines service animals as a dog (or, in some cases, a miniature horse) that "is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." 28 C.F.R. § 35.104.

The work or tasks performed by a service animal must be directly related to the student's disability.

To determine an animal qualifies as able to perform tasks or do work, the animal must be capable of *recognition* and *response*. For example, an animal performs tasks or does work when it is trained to *recognize* or sense that a person is about to have a psychiatric episode and the dog's trained *response* is nudging, barking, or removing the individual to a safe location until the episode subsides.

Providing emotional support, well-being, comfort, or companionship do not constitute work or tasks under the law. Examples of work or tasks include, but are not limited to, assisting individuals with vision impairments with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations.

We have always been told that we cannot put "at student request" on a 504 plan because the plan is supposed to state what the school is going to provide for a student. Can you please clarify?

It is true that it is the School District's obligation to ensure a student does not face discrimination on the basis of disability. To the extent that an eligible student is unable to recognize when he/she may need 504 accommodations/interventions or self-advocate, the student's plan should not make those accommodations/interventions contingent on request. If a 504 team, including the parents, agree a student can request or otherwise participate in the implementation of his/her accommodations/interventions, there is no legal prohibition against a plan allowing the student to do so.

What is the procedure/documentation to take a student off a 504?

The eligibility process is the same for getting students on and off 504 plans. The team must convene, consider eligibility and document its decisions on the 504 eligibility form. The forms include a section for the team to document its decision that a student does not qualify.

Who needs to be informed when a student goes on and comes off a 504?

The team must notify those individuals who have responsibilities under the Section 504 plan of those responsibilities and should alert those providers to discontinue implementation of the plan when the student no longer qualifies.

Are students who have a disability but do not require special education services under IDEA eligible for services under Section 504? Are students automatically eligible for Section 504 after being staffed out of IDEA?

Section 504 is not a consolation prize for students who don't/no longer meet IDEA eligibility criteria. The team must still determine whether the student has an impairment which substantially limits his/her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. In some cases, students may not require specialized instruction, but do require interventions/accommodations in the regular classroom that are available under Section 504.

Are 504 students excused from compliance with attendance policies?

A student with a disability may need accommodations or relief from certain policies, including attendance. This does not mean that students are given unlimited latitude as to when to turn in assignments or with respect to attendance policies or seat time. The team should consider the individual student's disability and its impact, then design accommodations accordingly. Examples might be, "For each day of classes missed, the student will receive 3 additional days to complete missing assignments." Unlimited periods to make up work often create an overwhelming situation for a student and should be carefully considered.

A student is receiving services that the School District maintains are necessary under **Section 504 in order to provide the student with an appropriate education. The student's** parents no longer want the student to receive those services. If the parent **wishes to withdraw the student from a Section 504 plan, what can the School District do to ensure continuation of services?**

The School District may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The School District must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive accommodations in the regular classroom.

How should a school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Congress recently clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such (e.g., a student is excluded from PE because he is believed to have a disabling condition, but actually has none and should be permitted to participate in PE).

What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.