



FACTSHEET

FREQUENTLY ASKED QUESTIONS ABOUT SECTION 504

1. If a student does not meet the eligibility criteria for IDEA, is he automatically eligible under Section 504?

There is no automatic eligibility under Section 504. A student must have a mental or physical impairment that substantially limits a major life activity. Depending on the severity of their condition, students who do not meet the eligibility standards under IDEA, may or may not fit within the section 504 definition. Each decision must be made on a case-by-case basis.

2. Is the definition of evaluation under Section 504 the same as that found in IDEA?

No. The requirements for an evaluation under Section 504 are general and do not contain the same specific procedures. Under Section 504, the evaluation may be formal or informal, depending on the needs of the individual student. For example, an evaluation may consist of a review of existing student, medical, or other records, or it may require the administration of assessments. An evaluation must be done before taking any action with regard to developing a 504 plan.

3. How often must a Section 504 plan be reviewed? How often should reevaluation occur?

When the 504 team is developing the Section 504 plan, the team should also decide when the plan will be reviewed. Although the law doesn't specify any timelines, the plan should be reviewed on a yearly basis. Also when a student is moving to another school level (from elementary school to middle school, for example), it is recommended to have the plan reviewed by the receiving school so that the appropriate accommodations are developed.

Reevaluations should be conducted periodically, as determined by the team, or before any significant change in the student's 504 plan or placement, such as long term suspension, referral to home and hospital teaching, dismissal from Section 504 eligibility, etc. It is advisable to conduct a reevaluation prior to changing school levels (i.e. elementary to middle school). Depending on the student's disability, the reevaluation might consist solely of a review of records.

If there are medical issues involved, a reevaluation should probably be conducted annually. The reevaluation may simply involve a review of additional information that the parents have received from their physician concerning the student's condition. The type of reevaluation required will depend on the individual needs of the student.

4. Can a student have both an IEP and a Section 504 plan?

Generally, a separate 504 plan would not be required for a student who is eligible for services under IDEA. However, each case should be considered individually when making this determination.

5. Does the school have to include all of the parent's recommendations in a Section 504 plan?

Participation by the parents in the Section 504 process regarding identification, evaluation, and placement is strongly encouraged. The success of the student depends on a positive and constructive collaborative relationship between the family and the school. While the team should consider recommendations proposed by the family, it is ultimately the decision of the Section 504 team to develop the plan and to include those accommodations and services that will provide the student with an equal opportunity to participate in school programs and activities. The 504 plan cannot guarantee identical results or level of achievement but it is designed to prohibit discrimination against the student on the basis of disability. If the parent does not agree with the 504 plan developed by the 504 team, the parent has the right to appeal the decision outlined in the Due Process Safeguards Information.

6. Are students with ADHD automatically protected under Section 504?

No. Some children with ADHD will meet the eligibility criteria under Section 504; others may not. Students with ADHD who exhibit no substantial limitation on learning or any other major life activity would not qualify under Section 504.

7. Can a 504 team consider Section 504 eligibility without first being provided with a medical diagnosis of ADHD?

Yes. If the school suspects that the student has an attentional impairment that substantially limits a major life activity and needs services under Section 504, then the team should conduct an evaluation. The team must consider a variety of sources when making a determination of eligibility. These may include aptitude and achievement tests, report cards and teacher reports, oral and written observations, student educational and health records, medical, psychological, and developmental records, and parent reports. If the school has all the information it needs to determine that a significant attentional problem exists, it does not need a medical diagnosis.

NOTE: There may be instances where the school staff may want to suggest to the parents that they consider consulting with a physician if there appears to be potential medical concerns. This suggestion differs, however, from requiring a parent to consult a physician before a school will take any action to determine eligibility under Section 504. The school nurse may prepare a packet of information to assist the physician.

If school staff determines that a medical assessment is necessary to make an appropriate evaluation, then the school district must ensure that the assessment is provided at no cost to the parents. (Appendix A to Part 104 of Section 504 federal regulation)

8. Must every student thought to have ADHD or diagnosed with ADHD be evaluated by a school for Section 504 eligibility?

It depends. If the school staff believes that the student may need services or accommodations under Section 504 because of the student's disability, then the school should conduct an evaluation. If the staff believes that the impairment does not substantially limit a major life activity, then they may choose not to conduct an evaluation. If the parents have requested an evaluation and the team decides that no evaluation is warranted, the school must provide the parents with a copy of their Section 504 due process rights.

9. Can my child get accommodations on standardized tests like the SATs ?

According to the Educational Testing Service (ETS), it will provide accommodations for the SATs if the student:

- has a disability that necessitates testing accommodation;
- has documentation on file at the school (Section 504 plan, an IEP, or evaluation by a qualified professional that states the diagnosis and need for accommodations);
- is receiving accommodations for classroom tests and/or standardized tests provided by the school.

There are instances where ETS will grant exceptions to the above requirements: school guidance counselors have more detailed information on these procedures.

10. What are the responsibilities of schools?

Schools must provide assurance of nondiscrimination, designate an employee to ensure compliance, provide grievance procedures, identify and locate all qualified children with disabilities who are receiving public education, provide notice of the district's 504 responsibilities and procedural safeguards.

The procedural safeguards include the following:

- right to an evaluation drawing on information from a variety of sources;
- right to written notice;
- right to review records;
- right to an impartial hearing.

11. What if there appears to be a violation?

The Office of Civil Rights investigates Section 504 complaints.

12. Which law takes precedence?

Schools must comply with *both* IDEA and Section 504. Compliance with IDEA does not necessarily mean that a district is in compliance with Section 504. One does not take precedence over the other!

13. How does Section 504 define "Appropriate Education"?

A free appropriate education is one provided by the public elementary or secondary school which includes regular or special education and related aids and services that :

- are designed to meet the individual educational needs of the persons with disabilities as adequately as the needs of the nondisabled persons are met, and
- are based on adherence to evaluation, placement, and procedural safeguard requirements.

14. What types of discrimination does Section 504 prohibit?

1. Denial of the opportunity to participate or benefit from a service which is afforded nondisabled students.

For example:

- refusing to allow a student with an IEP the opportunity to be on the honor roll;
- denying credit to a student whose absenteeism is related to a disability;

- refusing to dispense Ritalin to a student with ADD (a school cannot require parents to waive liability as a condition of giving medicine; however, it is wise to get your physician's prescription to back up medical accommodations.)
2. Provision of opportunity to participate in or benefit from a service which is not equal to that afforded others.
For example:
 - determining sports eligibility on a student's grades without regard to the student's handicapping condition sponsoring a student organization which excludes persons with disabilities.
 3. Denial of the opportunity to participate on a planning or advisory board because of an individual's handicapping condition.
 4. Otherwise limiting the enjoyment of any right, privilege, advantage or opportunity enjoyed by others
 5. Selecting a site or location which effectively excludes persons with disabilities or subjects them to discrimination
For example:
 - locating students with disabilities in inferior facilities due to lack of classroom space.

15. What does "reasonable accommodation" mean?

A recipient of federal funds shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified person unless the recipient can demonstrate that the accommodation would cause an undue hardship on the operation of its program. Courts have required accommodations to achieve:

- "meaningful, equal opportunity" – Accommodations need to take into account both the functional limitations of the individual and the alternative methods of performing tasks or activities which would permit people of varying abilities to participate without jeopardizing outcomes. Some examples of reasonable accommodations are – modified homework requirements, provision of readers, provision of taped textbooks, changes in the way tests are given, provision of a teacher's aide, or seating in the front row of the classroom.
- Accommodations must be individualized.
- The individual needs of the persons with a disability should be met to the same extent as the needs of persons without handicapping conditions.
- Modifications can be made to regular programs or the provision of different programs may be necessary.
- Accommodations should place the student with a disability at an equal starting level with the non-disabled student.