

Section 504

Rehabilitation Act of 1973





Legal Foundation & Key Principles

- First U.S. federal civil rights protections for persons with disabilities.
- Non-discrimination law.
- “No otherwise qualified individual with a disability. . . shall, solely by reason of her or 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”
- The objective is to provide equal access to the educational environment.
- Full Participation

Child Find



Section 504 contain a child find obligation.

- Schools are legally obligated to locate, evaluate, and – where necessary – accommodate students with eligible disabilities.
- Known or should have known
- Obligation is on the school district, not the parent.
- Consequence of child find obligation could be compensatory education or tuition reimbursement accruing from time the district first should have suspected the disability.



Eligibility

A student is protected under Section 504 if that student has a qualifying disability.

- “(i) A person who has a physical or mental impairment that substantially limits one or more major life activities, (ii) a history or record of such an impairment, or (iii) a person who is perceived by others as having such an impairment.” (ADA)

Physical or Mental Impairment Means:

- Any psychological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, immune, circulatory, hemic, lymphatic, and endocrine; or
- Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.



Eligibility

Major Life Activities

- Caring for oneself; performing manual tasks; seeing; hearing; eating; sleeping; walking; standing; lifting; bending; speaking; breathing; learning; reading; concentrating; thinking; writing; communicating; interacting with others; working. 34 CFR 104.3(j)(2)(ii); 28 CFR 35.108(c)(1)(i).
- The operation of a major bodily function (or individual organ within a body system): immune system; special sense organs; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems.

Substantial Limitations

- The term ‘substantially limits’ shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. ‘Substantially limits’ is not meant to be a demanding standard.
- The decision of whether an impairment “substantially limits” a major life activity for a student should be made on an individual basis.

Re-Evaluation for Eligibility every three years.

Mitigating Measures

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures:

1. Medication or medical supplies/equipment
2. Assistive technology
3. reasonable accommodations or auxiliary aids or services
4. learned behavioral or adaptive neurological modifications



504 Plans

Accommodations need to be related back to the substantially limiting disability

Accommodations need to be specific to the student

- If a student needs “preferential seating to avoid distractions”- Add details-where is the student less distracted? Where does the student do best?
- Preferential seating in the front of the room, close to direct instruction, to avoid distractions.

Same standard, content, and curriculum as typical peers. Accommodations provide a different path.

Some accommodations may require modifications to policies (student in a wheelchair using a staff elevator or accessible bathroom)

Best practice is to review the students plan annually. A parent can call a meeting at any time. If something isn't working on the students plan it's best to call a meeting for changes to the accommodations.





Technically Eligible

Students who have or may be reasonably known to have a disability or be eligible under Section 504 but who do not currently need a 504 plan for access.

When determining if a student is in need of an accommodation plan, you CAN use their mitigating measures.

- Example: A student who has ADHD and was eligible under section 504. When he doesn't take his medication he substantially struggles to concentrate, think, and communicate. However, when discussing his accommodation plan the team considers his mitigating measures (medication). He takes his medication daily and is able to concentrate, think and communicate in the classroom. The student is technically eligible and doesn't need a plan.

Case Manager Responsibilities

Notices and Consent

- Parents need to provide consent the first time you are seeking a possible 504 and any other time you are conducting an assessment on the student.
- Parents have the right to get Notice for any 504 team meeting
- Provide a copy of Parent Rights every meeting. Don't ask if they want a copy, just provide it.
- Provide a copy of the plan to staff that need to know. This may include teachers, aids, PE teacher, Nurse, Athletic Director, Coach, Duty Aids, etc.
- Record Keeping/Documentation



Extra Curricular Activities

- Do 504 accommodations apply to athletics, activities and ECAs (extra curricular activities)?
 - If yes, how? To what extent?
- Four-Prong Test of applicability:
 1. Does the accommodation fundamentally alter the sport or activity?
 2. Does the accommodation provide unfair advantage to the recipient?
 3. Does the accommodation disadvantage nondisabled participants?
 4. Does the accommodation significantly increase the safety risk of other participants?

If the answer is no, the school is obligated to accommodate.

Examples? Track starting strobe. Drum for snap count (football).





Thank you