



Procedures of Section 504

Overview of Section 504 of the Rehabilitation Act of 1973

Congress prohibited discrimination against persons with disabilities in the Rehabilitation Act of 1973, in a segment most often referred to simply as "Section 504." This is a broadly worded prohibition that covers both children and adults. The principles enumerated in this section were later expanded and served as the basis for the 1990 Americans with Disabilities Act (ADA).

Additionally, the ADA Amendments Act of 2008 also amended some definitions of Section 504. Section 504 of the Rehabilitation Act is a federal civil rights law and prohibits discrimination by school districts receiving federal financial assistance against persons with disabilities. Included in the U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a free appropriate public education (FAPE). These regulations require identification, evaluation, provision of appropriate services, and procedural safeguards in every public school in the U.S.

Section 504 prohibits discrimination against individuals whose physical or mental impairment substantially limits one or more major life activities, including, but not limited to: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, working, and/or learning.

Definitions

Student with a Disability: Any otherwise qualified student, who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such impairment.

Major life activities: Includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. These also include 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:** 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; genito-urinary; hemic and lymphatic; skin; and endocrine.



Section 504 Team: The Team shall consist of a group of persons, including persons knowledgeable about the child, the meaning of evaluation data and the placement options.

Section 504 Plan: A Section 504 plan sets out accommodations and services as determined appropriate by a student's Section 504 Team to provide the student access to his or her education. A Section 504 Plan may also take the form of a Health Plan, Medical Plan, SST Plan or some other plan that meets the student's needs and provides appropriate accommodations pursuant to Section 504.

Referral

All referrals for Section 504 eligibility should be submitted to find the Section 504 Coordinator or designee at the school level. Referrals will be documented on the appropriate form by the Section 504 Coordinator or designee. Based on the nature of the referral, the Section 504 Coordinator will contact all necessary individuals that should be included in the student's Section 504 eligibility determination.

Section 504 Eligibility and Evaluation

Upon receipt of a completed Section 504 referral, the Section 504 Coordinator or designee will begin collecting relevant information from the student's educators and school staff. Upon obtaining all relevant information, the Section 504 Coordinator will send to the parents, and other members of the Section 504 Team, notice of the meeting to determine the student's eligibility and/or determine if additional information is needed to determine eligibility.

A pre-placement evaluation should be conducted by the Section 504 Team of any student who, because of disability, needs or is believed to need special education or related services as defined by Section 504 before taking any action with respect to initial Section 504 placement. The Section 504 Team may review existing relevant information and documentation. This may include, but is not limited to: report cards, aptitude and achievement tests, teacher recommendations, attendance and discipline records, records of current academic performance, behavioral data, medical records, school clinic records, SST/RTI records, psychological evaluations, information related to physical condition, social or cultural background, and/or adaptive behavior. The Section 504 Team may also determine whether additional information, including more formal evaluation measures, is necessary. If this determination has been made it needs to be referred to the 504 Coordinator.



During the initial meeting, the Team will review all relevant information and complete the Section 504 eligibility form. If the Team determines the student is a child with a disability as defined by Section 504, the Team will then determine if the student requires accommodations or services and if so, should develop a plan consistent with the requirements of Section 504.

If the student is found not eligible under Section 504, or found eligible under Section 504 but not in need of a Section 504 plan, that determination should be documented and shared with the parents/guardians along with a copy of the procedural safeguards.

Section 504 Plan

If the Team determines that the student requires accommodations or services, it should develop a plan consistent with the requirements of Section 504.

When a Section 504 plan is developed by a Section 504 Team, the Section 504 Coordinator or designee will provide the plan to all of the appropriate school personnel. The plan remains in effect until either a new plan is developed or until a Section 504 Team determines that the student no longer qualifies as disabled under Section 504.

If the parent does not attend the meeting then a copy of the plan (if developed or revised) and the procedural safeguards should be sent home to the parents/guardians.

The Section 504 Plan should be reviewed periodically.

Re-evaluation

A Re-evaluation in accordance with the above procedures should be conducted periodically and before any subsequent significant change in placement.

Discipline / Manifestation Determination Reviews

Students with disabilities who are facing disciplinary actions are entitled to a Manifestation Determination Review (MDR) to determine whether the student's misconduct was caused by or related to the student's disabling condition or due to an inappropriate implementation of the plan. The 504 team will hold a manifestation determination meeting if there is a change of placement. Suspensions for less than 10 school days may be effectuated without holding a Section 504 Team meeting. However, a series of short suspensions over the course of the school year that would amount to a total of more than 10 school days may require that a Section 504 manifestation determination meeting be held. When making the manifestation determination, a Section 504 Team, must meet to address the following:



- Was the misconduct caused by, or directly and substantially related to, the student's disability?
- Was the misconduct a direct result of the District's failure to implement the Section 504 Plan?

If the Section 504 Team determines that there is no substantial relationship between the conduct and the student's disability and that the Section 504 Plan was properly implemented, the school may proceed to discipline the student in the same manner as it would a non-disabled student.

If the Section 504 Team determines that there is a substantial link between the conduct and the student's disability or that the Section 504 Plan was not properly implemented, the Section 504 Team must review and/or revise the Section 504 Plan to address the student's conduct. In such a situation, the student's placement would not be changed without consent of the parent/guardian of the student. An agreed upon change of placement may occur as a result of disciplinary infractions involving drugs, weapons, or behavior that has substantially injured or endangered the safety of the student or others. Notice of the Section 504 Team's decision regarding the manifestation determination will be provided to the parent.

Note: A student who is currently using illegal drugs or alcohol, and is to be disciplined by the school for such behavior loses the procedural protections provided by Section 504, including the right to a manifestation determination review prior to a change in placement for disciplinary reasons. This would hold true even if the disabling condition could be related to the misconduct.

Nonacademic Services 34 CFR 104.37

An LEA shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.

Transfer Students

In the case of a Section 504 eligible student transferring into the school system, a Section 504 Team will assemble to determine if the current Section 504 plan is appropriate and can be implemented as written. The Section 504 Team may revise the student's current Section 504 and/or request further evaluation and/or information. If further evaluation or information is requested, the student will be provided an interim Section 504 plan.



Hearing and Complaints

Parents/guardians of a student, or the student if 18 years of age or older, may file a local complaint pursuant to Board Policy.

Parents/guardians of a student, or the student if 18 years of age or older, may file a complaint with the Office for Civil Rights of the United States Department of Education as outlined in the Procedural Safeguards.

If the parents/guardians of a student, or the student if 18 years of age or older, disagree with the Section 504 Team regarding identification, evaluation, or educational placement they are entitled to request an impartial hearing. If a parent requests a hearing, they should be referred to the Section 504 Coordinator and the hearing request form should be made available.

** These procedures are intended to be guidance to school employees and do not expand or replace the District's obligations or the student's or parent's rights under the law.

Section 504 Procedural Safeguards 34 CFR 104.36

An LEA that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students who, because of a disability, need or are believed to need special instruction or related services, a system or procedural safeguards that includes notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

1. Overview: Any student or parent or guardian ("grievant") may request an impartial hearing due to the school system's actions or inactions regarding your child's identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the school system's Section 504 Coordinator; however, a grievant's failure to request a hearing in writing does not alleviate the school system's obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school system's Section 504 Coordinator. The school system's Section 504 Coordinator will assist the grievant in completing the written Request for Hearing.



2. Hearing Request: The Request for the Hearing must include the following:

- a. The name of the student.
- b. The address of the residence of the student.
- c. The name of the school the student is attending.
- d. The decision that is the subject of the hearing.
- e. The requested reasons for review.
- f. The proposed remedy sought by the grievant.
- g. The name and contact information of the grievant.

Within 10 business days from receiving the grievant's Request for Hearing, the Section 504 Coordinator will acknowledge the Request for Hearing in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the grievant of the specific information needed to complete the request. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

3. Mediation: The school system may offer mediation to resolve the issues detailed by the grievant in his or her Request for Hearing. Mediation is voluntary and both the grievant and school system must agree to participate. The grievant may terminate the mediation at any time. If the mediation is terminated without an agreement, the school system will follow the procedures for conducting an impartial hearing without an additional Request for Hearing.

4. Hearing Procedures:

- a. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant's Request for Hearing unless agreed otherwise by the grievant or a continuance is granted by the impartial review official.
- b. Upon a showing of good cause by the grievant or school system, the impartial



review official, at his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.

- c. The grievant will have an opportunity to examine the child's educational records prior to the hearing.
- d. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.
- e. The grievant will have the burden of proving any claims he or she may assert.
When warranted by circumstances or law, the impartial hearing officer may require the recipient to defend its position/decision regarding the claims (i.e. A recipient shall place a disabled student in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §104.34). One or more representatives of the school system, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.
- f. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings. The impartial review official shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.
- g. The impartial review official shall determine the weight to be given any evidence based on its reliability and probative value.



- h. The hearing shall be closed to the public.
- i. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.
- j. Witnesses will be questioned directly by the party who calls them.
Cross-examination of witnesses will be allowed. The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.
- k. Testimony shall be recorded by court reporting or audio recording at the expense of the recipient. All documentation related to the hearing shall be retained by the recipient.
- l. Unless otherwise required by law, the impartial review official shall uphold the action of school system unless the grievant can prove that a preponderance of the evidence supports his or her claim.
- m. Failure of the grievant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the impartial review official or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.

5. Decision: The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.

6. Review: If not satisfied with the decision of the impartial review official, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations.