

Section 504

What is Section 504?

Section 504 is a federal civil rights statute that prohibits discrimination against individuals with disabilities in federally-funded programs or activities. Because all public schools receive federal funds, they cannot discriminate against people with disabilities. To protect students with disabilities from discrimination, schools must develop an individualized plan for each student with a disability to assure that student's access a free, appropriate public education. A Section 504 Plan should include any modifications and accommodations necessary to ensure that the child can benefit from his or her education. For example, if a child has difficulty walking, the student could be given special permission to ride the elevator and relaxed requirements in gym class. If a child is disabled by problems with attention, the student's "504 Plan" could include the right to sit very close to the teacher and a take tests in a separate place with fewer distractions.

How can I get a Section 504 Plan?

If your child has a disability and needs accommodations and modifications to access his or her education, you may want to **request that your child's school arrange for a meeting of the school's Section 504 Committee**. The committee, which will include the parents, will determine whether the child needs a Section 504 Plan and whether additional testing needs to be undertaken to determine the child's needs.

Who is eligible for a Section 504 Plan?

To be eligible for a Section 504 Plan, a child must have a physical or mental impairment that substantially limits one or more major life activities; have a record of such impairment; or be regarded as having such impairment. Major life activities are defined broadly as activities that "include, but are 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." A major life activity also includes a major bodily function, which is broadly defined, and includes "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." Not all medical problems will result in eligibility for a Section 504 Plan; the problem must cause a "substantial limitation." This means there must be a significant restriction in the way a person engages in a life activity, as compared to other people.

A disability only needs to substantially limit one major life activity in order to qualify and can be episodic or in remission, so long as the impairment does substantially limit a major life activity when active. Also, the determination of whether the impairment substantially limits a major life activity must be considered without the "ameliorative effects of mitigating measures" such as medication, prosthetics, hearing aids, mobility devices, assistive technology, reasonable

accommodations, auxiliary aid, learned behavioral modifications or adaptive neurological modifications. For example, a child with ADHD who takes medication to manage his symptoms would be evaluated for eligibility through considering how his ADHD affects his ability to function when he is not taking his medication.

Congress has emphasized that the definition of disability that impacts Section 504 Plans is intended to be broad to ensure wide coverage of individuals with varying disabilities. The U.S. Department of Education Office for Civil Rights (OCR), which is in charge of enforcing the law, has issued policy guidance to schools in implementing the Section 504 law. This guidance can be accessed through OCR's website (<http://www2.ed.gov/about/offices/list/ocr/index.html>).

Especially helpful are OCR's FAQ ("Frequently Asked Questions") documents, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>
<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

OCR has emphasized that schools must consider each major life activity separately. For example, schools must consider a student's disability in the area of learning separately from the student's disability in the area of concentrating or communicating and a student may qualify as having a disability even if his or her impairment doesn't substantially limit their learning and they are earning good grades. [See *Virginia Beach (VA) City Public Schools*, 54 IDELR 202 (OCR 2009)]

What's the difference between a Section 504 Plan and an IEP?

A Section 504 Plan assures access to the educational environment by protecting against discrimination; an IEP is a program of special education services. An IEP, or individualized education plan, is made available to students who have a disabling condition that interferes with their learning and who require special education services. Special education services are specially-designed instruction and related services such as speech therapy or occupational therapy. Under Section 504, the disability may or may not interfere directly with learning; the disability may be a physical one that only interferes with full access to the educational environment. Typically, a Section 504 Plan will offer accommodations and modifications to the environment but will not provide for any specialized instruction. An IEP, on the other hand, will offer specialized instruction as well as needed modifications and accommodations.

The IEP process is a highly structured process that results in a written plan that is reviewed annually by a team of educators and the parents of the student. The Section 504 process is much less formal. There is no requirement that the Section 504 Plan be in writing (although most are) and no requirement that it be reviewed on any particularly time line. Parents of a child with a Section 504 plan need to be attentive to make sure their child's plan is current and implemented.

As a parent, what should I do if my child doesn't get a Section 504 Plan but I think he or she needs one?

If you are unsatisfied with the Section 504 Committee's eligibility decision or with the accommodations and modifications provided in your child's resulting 504 Plan, you can file a grievance under your school district's Section 504 Plan grievance procedures, making sure that you adhere to all the time limits stated in that procedure. You also have the right to file a discrimination complaint with OCR. Generally, discrimination complaints filed with OCR must be filed within 180 days of the "discriminatory event" (e.g. the date your child was denied a 504 Plan or the date that the faulty 504 Plan was developed). You can fill out an OCR discrimination complaint form online at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or call OCR's D.C. Office, which handles complaints for all schools in North Carolina, at (202) 453-6020.

More information about OCR's complaint process can be found at:
<http://www2.ed.gov/about/offices/list/ocr/qa-complaints.html>.

For information on your particular school district's grievance procedure for 504 complaints, please look at your school district's website or contact your school's (or school district's) 504 facilitator/coordinator.