

## Section 504 Frequently Asked Questions

### What is Section 504?

Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. 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.

### What is the definition of a disabled student under Section 504?

A disabled student is one who:

- A. Has a physical or mental impairment that substantially limits one or more major life activities, including learning;
- B. Has a record of such impairment; or
- C. Is regarded as having such impairment.

### What is meant by “otherwise qualified”?

For an individual to be covered under Section 504, the student must be otherwise qualified, meaning that a student with a disability must be qualified to do something before the presence of a disability can be a factor in discrimination. Therefore, if a student wants to participate in some activity, but the individual is not otherwise qualified for that activity, not allowing the person to participate would not be considered discrimination.

### What is a “major life activity”?

Major life activities are:

Caring for oneself, doing manual tasks, walking, seeing, hearing, eating, sleeping, breathing, standing, lifting, bending, learning, reading, concentrating, thinking, communicating, working or the operation of a major bodily function. This list is not exhaustive. An impairment that substantially limits one major life activity need not limit other major live activities in order to be considered a disability.

### Who decides if a student is “substantially limited”?

The standard that should be used to determine if a physical or mental impairment results in a substantial limitation is average performance in the general population, not just within the classroom, school or the school district. Therefore, the standard used is not based on the optimal performance level of a student, but rather the average performance of all students in the general population.

A student who is determined to have a disability is not automatically eligible or covered under Section 504. The disability must substantially limit a major life activity. Furthermore, simply because a student is considered for Section 504 protection does not always mean that the student is eligible. School personnel must use their professional judgment to determine eligibility.

In addition, a student is disabled under Section 504 if they have a physical or mental impairment that WOULD substantially limit them in a major life activity if they were NOT taking advantage of

mitigating measures (except in the case of glasses or contact lenses). Examples of mitigating measures include such things as medications.

### **What is the connection between Section 504 and Special Education?**

The Individuals with Disabilities Education Act (IDEA) is the legal mandate for Special Education. Under IDEA, disabilities fall into categories requiring that a student meet very specific criteria for eligibility. Even if a student meets the criteria for eligibility in one of the categories, the student must also have an education need for the “specially designed” services available through special education.

All students who are eligible for special education are also considered to be disabled under Section 504. However, all students who have been determined to be disabled under Section 504 may not be disabled under IDEA (special education).

### **What are some common elements of Section 504 and IDEA?**

The definition of disability under Section 504 is much broader than the categorical definitions under IDEA. Section 504, because it is a discrimination law, also protects all special education students.

Common Elements:

- A free appropriate education must be provided.
- Students with disabilities must be educated with not-disabled students to the maximum extent possible.
- Operation guidelines must be developed to identify, locate and serve all disabled students living in the school district.
- Evaluation and service/accommodation procedures must be established.

Differences:

- Section 504 is a civil rights law. There is no funding associated with compliance. It is not a program or intervention system. The district must simply “accommodate” for the disability. Special Education, under IDEA, is partially federally funded. Interventions are specific and compliance is strictly monitored.
- Section 504 covers all activities of the district and includes employees, parents, or anyone coming to school sponsored activities. IDEA only covers specific students who must meet very clear eligibility requirements.
- The definitions of “disability” are different.
- Evaluation to determine eligibility is different for each law. Section 504 does not require as comprehensive an evaluation to determine if there is a disability as must be done under IDEA. Observations, medical information and professional judgments are considered legitimate sources of evaluation under Section 504.
- Section 504 is intended to “level the playing field” usually by eliminating barriers. IDEA requires a program of services as measurable and individual goals and outcomes which must be regularly documented.

### **What is Section 504 eligibility and how does it work?**

The following questions should be addressed when considering eligibility for Section 504 accommodations:

1. Is the student’s condition physical or mental?

2. Does the condition impair a major life activity?
3. Is the degree of the impairment substantially limiting as compared to the general population?
4. Does the student's condition require any accommodation in order for the student to access an educational activity?
5. Would the impairment substantially limit a student in a major life activity if they were NOT getting a mitigation measure?

The following factors should be considered when determining if the substantially limits requirement is met:

1. The nature of the severity of the impairment
  - a. Is the impairment mild or severe?
  - b. Does the impairment result in a failure or the student not achieving at average expected levels?
  - c. Does the impairment impact on a major life activity? If so, how is it impacted?
2. Duration or expected duration of the impairment
3. Permanent or long term impact resulting from the impairment
4. Is the impairment episodic or in remission?

**What if my student qualifies under IDEA as needing special education services, but I would rather have them served as student with a disability under Section 504?**

Under IDEA regulations and law, students who qualify under one of the special education categories may not be labeled as a student with a disability solely under Section 504 as a "consolation" or because a parent fears the designation of having a student in special education. If a parent turns down services available under IDEA, they may also be turning down any rights they may have under Section 504. Additionally, if a student is evaluated and does not qualify under IDEA then it is clear that the student likely does not have that same disability under Section 504, or does not have an educational need. However, there are some exceptions if the student is receiving a mitigating measure such as medication, but does not have an educational need. In this case, the student may be able to have some minor accommodations to monitor education progress, but these would not rise to the level of specially designed instructions or interventions available under Special Education. The student may also have other disabilities that would enable them to qualify under Section 504.

**Who must be contacted if I believe a student may qualify under Section 504?**

Every campus has a Campus 504 Coordinator. Contact your home campus to refer your student to this person or contact the District 504 Coordinator at 830-796-6209.

**What is a Campus 504 Committee?**

The Campus 504 Coordinator will convene a 504 Committee to conduct an evaluation to determine if a student is eligible for Section 504 accommodations. The committee is made up of the Campus 504 Coordinator and other knowledgeable staff who may be either familiar with the student and/or familiar with the condition. Parents and/or guardians are not required members of the committee. Bandera, however, strongly wishes that parents will participate in the meeting either in person or by telephone conference call. Unlike special education, parent agreement with the decisions of the 504 committee is not required.

**What does the 504 Committee do?**

The Campus 504 Committee will do the following:

#### Identification, Referral and Evaluation:

1. Any student because of a disability who may need accommodations not available through any other program may be referred to this Committee by parents, guardians, doctors, community agencies or any other school staff.
2. Based upon a review of school records or reports from outside evaluators (including, but not limited to, academic, social, attendance, health, behavior or any other helpful information both formal and informal) the Committee will determine if the student meets the eligibility of a student with a disability under Section 504 by answering the following 4 questions:
  - a. Does the student have a physical or mental impairment?
  - b. Does the physical or mental impairment affect one or more major life activities (including major bodily functions)?
  - c. Does the physical or mental impairment substantially limit a major life activity?
  - d. Does the student need Section 504 services in order for his/her educational needs to be met as adequately as those of non-disabled peers?
3. Analyzing the Results of the Committee's Answers
  - a. If all four questions are answered "Yes", the student is eligible for both the nondiscrimination and FAPE (Section 504 Services Plan) protections of Section 504. The Section 504 Committee will create a Section 504 Services Plan for this student.
  - b. If only the first three questions are answered "Yes" the student is eligible for the nondiscrimination protection of Section 504, together with manifestation determination, procedural safeguards, and periodic Re-Evaluation or more often if needed. The 504 Committee will NOT create a Section 504 Services Plan at this time as the student's needs are currently being met as adequately as his nondisabled peers.
  - c. If any of the first three answers is "NO" the student is not eligible for Section 504 nondiscriminatory protection and is not eligible for a Section 504 Services Plan.
4. The Committee will notify the parent or guardian of their decision, clearly outlining the basis for this decision.
5. The Committee will obtain current evaluation information as needed, but at least every three years to determine if the disability identified continues to meet the qualifications under Section 504.

#### Student Services Plan and Placement

1. For a student who has been identified by the Committee as a qualified disabled student under the meaning of Section 504, the Committee will determine and develop a written service plan to ensure that the student has access to a free appropriate education if needed.
2. The Committee will ensure that the plan will be transmitted to any and all campus staff needing to be aware of and/or implement the plan.
3. The Committee will ensure that the student will be placed with non-disabled peers or in the placement they would normally attend if they were not disabled under Section 504.

#### Annual Review

1. The Committee will monitor the progress of the disabled student and the effectiveness of the student's plan at least annually (or more often if needed) to determine whether the plan continues to be appropriate or necessary.

#### **What are some samples of typical accommodations found in a Section 504 Service Plan?**

There are numerous accommodations that may be necessary for students with disabilities under Section 504. An accommodation is an adaptation or adjustment that is needed to "level the

playing field". Individual needs determined during evaluation should guide the services decision due to the wide variety of needs of students qualifying for Section 504. Note the following items are common but are not the only services or accommodations available under Section 504:

#### Accommodations in the Classroom and Testing

- Oral Testing
- Oral Response
- Others Testing Accommodations
- Taped Texts
- Note-taking assistance
- Extended Time (by %)
- Shortened Assignment (by %)
- Peer assistance/tutoring
- Preferential seating
- Assignment notebook
- Organizational strategies
- Use of manipulative

#### Accommodations for Behavior

- Clearly defined limits
- Frequent reminder of rules
- Reduce distracting stimuli
- Journal of daily behaviors
- Proximity seating
- Cooling off period
- Reinforce appropriate behavior
- Consistent routine

#### **What if my student is qualified under Section 504 and they are disciplined at school?**

Students served under Section 504 are treated similar to students served under IDEA with respect to discipline. The Student Code of Conduct outlining rules and standard can be applied to disabled students just as they are applied to non-disabled students. The following summarizes considerations when working with students protected under Section 504.

- As with any student, students eligible under Section 504 may be suspended for any violation of the Code of Conduct.
- When the number of suspensions accumulates to 10 or more days, a manifestation determination meeting of the student Campus 504 Committee is required.
- When placement at a Discipline Alternative Education Placement (DAEP) is contemplated, a manifestation determination meeting by the Campus 504 Committee is also needed.
- A manifestation determination must be made before suspending a student for more than 10 days (consecutive or cumulative) and before DAEP placement or expulsion.
- A manifestation determination means that the Campus 504 Committee must decide if there is a direct relationship between the behavior that violated the Student Code of Conduct and the student's disability.
- If there is no direct relationship between the behavior in question and the disability, the student may be disciplined as any other student.
- If the 504 Committee believed there is a relationship, then the student may not be suspended for more than 10 days, moved to DAEP or expelled. The 504 Committee needs

to adjust the service plan to make an effort to address this behavior if it is related to the student's disability.

- Students currently engaged in drug or alcohol abuse are not protected under Section 504.

### **What rights does one have under Section 504?**

The parent or guardian of students being considered for Section 504 eligibility shall be given the "Notice of Parent and Student Rights" under Section 504.

The parent or guardian must be notified in writing of all District decisions concerning the identification, evaluation or placement of their student in Section 504.

The parent or guardian has the right to review student records as per Board Policy.

The parent or guardian has the right to appeal the decisions of the Campus 504 Committee to the question the implementations of individual accommodations to the District 504 Coordinator.

The parent or guardian has the right to an impartial hearing (either with or without legal representation) as to the District decisions concerning the identification, evaluation or placement of a disabled student under Section 504. The request for the hearing must be filed with the District Coordinator for Section 504, at 815 Pecan Street, Bandera, TX 78003. The request must include: a) the specific nature of the disagreement, b) specific relief or correction needed, and c) any other information that may be helpful in understanding the request.

Finally, you have the right to file a complaint with Office for Civil Rights in Dallas.

Office for Civil Rights Dallas Regional Office; 1999 Bryan Street, Suite 2600; Dallas, Texas 75201.  
Telephone 214-661-9600 | FAX: 214-661-9587 | TDD 877-521-2172 Email: [OCR.Dallas@ed.gov](mailto:OCR.Dallas@ed.gov).

### **How do I learn more about the Section 504 law?**

Visit the U.S. Department of Education Office of Civil Rights web site.