

# Chapter 6

## Section 504



<sup>1</sup>Title II of the Americans with Disabilities Act extends this prohibition against discrimination to state or local government services, programs, or activities regardless of whether they receive any federal funding, including public schools. The regulations for Section 504 and Title II are virtually identical. Both laws may be used to challenge discriminatory practices in schools.

Like the IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504) provides protection and services to school children with disabilities.<sup>1</sup>

Section 504 is a civil rights statute. It prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance - including schools. Section 504 ensures that people with disabilities have equal access to participate in services and activities as persons without disabilities.<sup>1</sup>



Section 504's eligibility requirements are different from those of the IDEA.

As explained in Chapter 1, the IDEA only applies to your child if she has one of the specific physical, mental, emotional, or sensory impairments listed as the 13 recognized disability categories under the IDEA and if she has been found to need special education and related services.

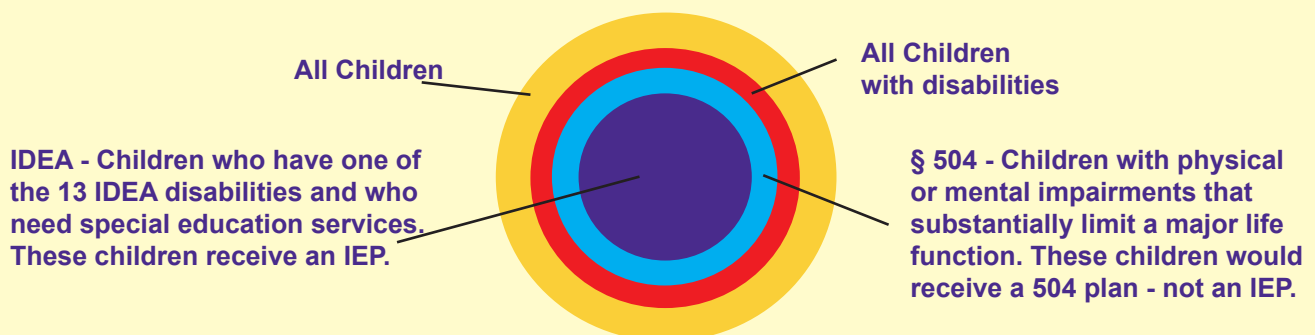
If your child has been found ineligible for services under the IDEA, always ask the evaluation team to consider whether she may be eligible for services under Section 504 and/or to refer her to your school's Problem Solving Team. School staff should automatically consider these options, but often do not.

Similarly, just because your child has never been evaluated for IDEA-services, doesn't mean she shouldn't be considered for Section 504 services and protections. Schools have Child Find obligations under Section 504 just like they do under the IDEA. Do not accept a blanket statement from your child's school that she wouldn't qualify for Section 504's protections and services.

### What does Section 504 provide to my child?

Section 504 requires schools to provide a free appropriate public education (FAPE) to eligible students. An appropriate education is regular or special education and related aids and services that are designed to meet the individual needs of your child as adequately as the needs of children without disabilities are met.

### Eligibility for Section 504 and the IDEA



An appropriate education is also one that follows Section 504's requirements regarding evaluation, placement and procedural protections.

Finally, Section 504 requires that eligible students be provided equal access to non-academic and extra-curricular activities like counseling, competitive or recreational athletics, transportation, health services, special interest groups or clubs, and student employment.

### What students are covered by Section 504?

To be eligible under Section 504, a student must:

- have a physical or mental impairment (permanent or temporary) that substantially limits one or more major life activities;
- have a record of such an impairment; or
- be regarded as having such an impairment.

Section 504 regulations do not provide an exhaustive list of specific diseases or conditions that constitute physical or mental impairments.

They do, however, provide this description: a physical or mental impairment is any physiological 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, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder, such as an intellectual disability [formerly mental retardation], organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Section 504 regulations define major life activities as such things as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. The operation of a major bodily function, including those of the immune, digestive, genitourinary, neurological, brain, respiratory, and circulatory systems, among others, are also considered major life activities. Section 504's list of examples of major life activities and major bodily functions are not exhaustive - an activity or function not specifically listed could still, nonetheless, be a major life activity.

Only one major life activity needs to be affected by your child's disability to be considered an impairment; it need not affect more than one life activity.

Disabilities or conditions that are episodic in nature - that is, they only occur on occasion rather than being constant - qualify as impairments if they would limit a major life activity when active. Epilepsy or asthma could be considered episodic. Cancer that is in remission could also be considered episodic.

The decision about whether a major life activity is substantially limited is made on a case-by-case basis by a Section 504 team.





### What does an appropriate evaluation look like under Section 504?

There is no formal definition or test to determine if a major life activity is “substantially limited.” Compared to the IDEA, Section 504 provides less direction to schools about the required evaluation process, who must be involved in the process, consent procedures, evaluation documentation, and timelines.

Ask your school for a copy of its Section 504 evaluation, reevaluation, placement and due process procedures!

If your child already has been properly evaluated for eligibility under the IDEA, that evaluation process meets the evaluation requirements under Section 504 and no further evaluation to determine eligibility under Section 504 should be necessary. If your school chooses to adopt a separate process, that process must follow the requirements for evaluating the needs of students under Section 504.

Like the IDEA, Section 504 evaluations must be validated for the specific purpose for which they are being used and administered by trained personnel in conformance with the instructions provided by their producer. The evaluations must be tailored to assess specific areas of educational need. Finally, they must be given so that the test results accurately reflect your child’s aptitude or achievement levels or whatever other factor the test purports to measure.

The group making Section 504 eligibility and service plan decisions must draw upon information from a variety of sources. Depending on your child, that information could include aptitude and achievement tests, teacher recommendations, health conditions, social or cultural background information, and adaptive behavior - whatever factors might impede her equal access to the school’s programming. The group must establish procedures to ensure that this information is documented and carefully considered. The group must be composed of persons knowledgeable about your child, the meaning of evaluation data, and placement options.

Note that there is no specific federal requirement that parents be included as part of the group making Section 504 eligibility and service decisions. However, as a practical matter, most school districts have policies in place that require parents to be part of that group. When it comes to Section 504, it pays to check your district’s written policies.

Many parents think that having a physician’s diagnosis of a disability (for example, asthma or ADHD) means that their child is automatically eligible for services under Section 504. A physician’s diagnosis is just one piece of information that Section 504 eligibility teams must consider in determining eligibility. The Team must determine whether there is an impairment (the physician’s diagnosis will help inform this determination) and then the Team must decide whether that impairment substantially limits a major life function.

### What procedural safeguards must be provided under Section 504?

Every school district must establish a system of procedural safeguards under Section 504 that provides for:

- parental consent to be provided before any evaluation can take place
- notice to you explaining any evaluation and placement decision affecting your child and of your rights under Section 504
- an opportunity for you to examine relevant educational records for your child
- an impartial hearing process that includes the opportunity for you to participate and be represented by counsel and that allows decisions made by your school regarding Section 504 eligibility, services or placement to be reviewed.



### What are mitigating measures and how are they considered by the Section 504 team in determining eligibility?

Mitigating measures are devices, medications, or practices that your child uses to correct for, or reduce, the effects of her mental or physical impairment.

Here's a list of some kinds of mitigating measures: medication; medical supplies, equipment or appliances; low-vision devices (but not ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

When deciding whether your child is eligible under Section 504, the evaluation team may not consider the impact of such mitigating measures. Rather, it must consider the impact of your child's physical or mental impairment(s) on her major life activities without the helpful effects of such mitigating measures.

Additionally, the focus should be on how the major life activity is limited, not what your child can do (or has done) in spite of the impairment.

### Is there a least restrictive environment (LRE) mandate to Section 504 services like there is in the IDEA?

Yes. Section 504 requires a school to serve an eligible student in the regular educational environment unless it's demonstrated that the student's education, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

Similarly, when considering non-academic and extracurricular services and activities, the school must ensure that an eligible student participates with persons without disabilities to the maximum extent appropriate, providing needed aids and services.

**What do I do when my school does not follow proper evaluation or placement procedures under Section 504 or it does not follow my child's 504 plan? What if I am not satisfied with an evaluation, placement or service decision made by the 504 team?**

You may want to consider filing a complaint with Office for Civil Rights (OCR) for matters involving procedural issues (ex., untimely delays in evaluation) or where your child's Section 504 plan is not being followed (ex., classroom accommodations are not being provided), or where your child is being treated differently because she has a disability (ex., the bus that transports children with disabilities arrives at school late and picks up children early, thereby providing a shortened school day).

For substantive matters regarding issues like your child's eligibility or the sufficiency of Section 504 plan, you might want to consider requesting an impartial hearing from your school. Every school district must make an impartial hearing available to parents to resolve disputes related to Section 504.

Guidance provided by OCR states that, except in extraordinary circumstances, it will not review the result of individual placement or other educational decisions so long as your school district complies with the procedural requirements of Section 504. Thus, OCR generally will not evaluate the content of your child's educational plan.

OCR does not engage in formal mediation, but may offer to facilitate mediation to resolve a complaint filed under Section 504. If both parties are willing to mediate, OCR will work with them to help reach a resolution by providing each side with an understanding of pertinent legal standards and possible remedies.



If you would like more information on the OCR complaint process, visit OCR's web site at:

<http://www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>

Or, contact OCR at:

Office for Civil Rights, Atlanta Office  
 U.S. Department of Education  
 61 Forsyth Street, S.W., Suite 19T10  
 Atlanta, GA 30303-8927  
 Telephone: (404) 974-9406  
 Fax number: (404) 974-9471  
 Email: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)

The agency provides a comprehensive Case Resolution and Investigation Manual that outlines the OCR complaint process. On-line complaints may be filed on the agency's web site.