

## Section 504

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law that prohibits discrimination against persons with disabilities. Local education agencies (LEAs), including school districts and charter schools, are required to provide a free appropriate public education (FAPE) to qualified students who have a disability.

FAPE consists of regular or special education and related aids and services designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met. The goal of Section 504 is to level the playing field, not to maximize potential.

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### Section 504 of the Rehabilitation Act of 1973 | 29 U.S.C. §794

*"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..."*

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### A few differences between Section 504 and the Individuals with Disabilities Education Act (IDEA):

#### **Section 504**

- Civil rights law
- No separate funding
- No disability "categories"
- Requires substantial limitation on a major life activity
- Parent participation recommended
- Section 504 plan

#### **IDEA**

- Federal grant program
- State and federal funding
- Disability categories
- Requires adverse educational impact and need for specially designed instruction
- Parent is a required IEP team member
- IEP

### Who is protected under Section 504?

Any student who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

Schools must provide a free, appropriate, public education (FAPE) to any student who is eligible under the first prong—any student who has a physical or mental impairment that substantially limits one or more major life activities.

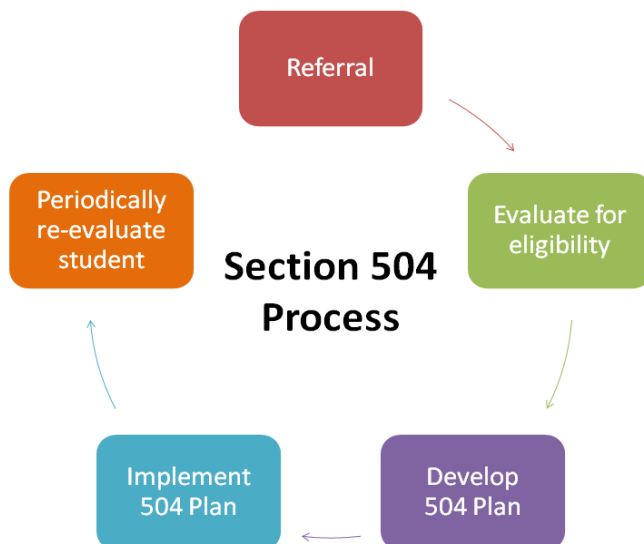


## Procedural Requirements

- Designate a Section 504 Coordinator
- Adopt complaint procedures
- Receive parent consent before initial evaluation and initial placement
- Notify parents before taking any action regarding identification, evaluation, and placement
- Give parents a copy of their procedural safeguards under Section 504
- Make evaluation and placement decisions as a team
- Periodically re-evaluate the student

## Section 504 Process

Schools must **refer** and **evaluate** a student they know or suspect has a disability and may need services as a result to access and benefit from their education. If eligible for services, the school must **develop a Section 504 Plan** for the student, **implement the Section 504 Plan**, and **periodically reevaluate** the student to assess need for services.



## Referral

A school must conduct a free evaluation of any student who—because of a disability—needs or is believed to need accommodations, aids, or services. If staff perceive or receive information to lead them to suspect a student has a disability, the LEA must evaluate the student.

### When should you consider referring a student?

- Is the student missing seat time (e.g., absences due to illness, missed instruction for behavior, trips to the nurse's room or restroom)?
- Has the student been evaluated for special education, but was determined not to be eligible?
- Is the student struggling academically? Not advancing grade-to-grade?

- Is the student experiencing behavior issues?
- Does the parent suspect that the student may have a disability?
- Is the student returning to school after a serious illness, or after Home Hospital Instruction?
- Is the student on a health plan?

**Note:** Since the ADA Amendment Act of 2008, students with health plans will often qualify under Section 504. Without following the Section 504 process, using health plans alone may result in the LEA to be out of compliance with Section 504. If the school is administering medication, for example, this may be a "related aid or service" under Section 504. Consider referring and evaluating all students on health plans, or developing a targeted approach.

Make sure staff understand the process to refer a student for an evaluation under Section 504 when they know or suspect that a student has a disability and needs accommodations, aids or services.

**Do not require the parent to provide a medical diagnosis.**

It is not the parent's responsibility to bring forward concerns about a disability, or to seek out a medical diagnosis.

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### Resource Guide on Students with ADHD and Section 504

*"[T]here is nothing in Section 504 that requires a medical assessment as a precondition to the school district's determination that the student has a disability... If a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation... the school district must ensure that the student receives this assessment at no cost to the student's parents. If, however, a district believes a medical assessment is necessary and the parent volunteers to pay for a private assessment, the district must make it clear that the parent has a choice and can choose to accept a school-furnished assessment."*

[www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf)

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## Evaluation

**At this stage in the process, procedural safeguards include:**

- Receiving parent consent before the initial evaluation
- Providing parents a copy of their rights/procedural safeguards
- Notifying parents of the outcome of the evaluation.

**Assemble a Section 504 team.**

One person cannot make evaluation or placement decisions alone! Assemble a team to evaluate the student. The team must include people who are knowledgeable about the student, who

understand the meaning of the evaluation data, and who are knowledgeable about placement options.

Do you have an administrator who needs to approve accommodations or expenditures in a Section 504 plan? If so, make sure they are on the Section 504 team.

### **Evaluate the student within a reasonable amount of time.**

An evaluation must be conducted within a reasonable amount of time after a student is recognized as potentially eligible.

Don't delay an evaluation simply because you can't get everyone in one room at the same time. Consider gathering information and input by phone, e-mail, or separate meetings if necessary.

### **Consider information from multiple sources.**

The evaluation involves reviewing information and data from various sources (e.g., teacher observations, medical information, attendance, behavior reports, special education data, work samples, discipline referrals, testing data, input from parents and student). If the team does not have enough information to make a determination, they may request additional data. For example, the LEA may pay for a medical evaluation if the team determines that they need a medical diagnosis in order to move forward with the evaluation.

### **What does the team evaluate?**

The team must determine:

1. Does the student have a disability?
2. If so, does the student need accommodations, related aids or services because of the disability?

### **Step One: Does the student have a disability?**

To be protected under Section 504, a student must have a physical or mental impairment that substantially limits one or more major life activities.

Major life activities are *not* limited to "learning." Other examples of major life activities include:

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Bending
- Reading
- Concentrating
- Thinking
- Communicating
- Major bodily functions (e.g., digestive, bowel, bladder, brain, circulatory, reproductive, neurological, respiratory)

## Mitigating Measures

At this point in the evaluation, the team should **ignore** the effects of mitigating measures when determining whether a student has a disability (e.g., medication, assistive technology, medical equipment, accommodations). In other words, the team must consider if the student is substantially limited in a major life activity when they are not using mitigating measures, such as medication.

The team should also consider the impact of the impairment when it is active, such as when an allergy is triggered.

**Reminder:** Do not use grades alone to determine whether a student has a disability. Do not forget to consider whether the student's academic success might be the result of mitigating measures.

### **Step Two: Does the student need accommodations, aids, or services?**

When assessing the student's needs for accommodations, aids, or services, consider how the disability impacts the student at school. Next, consider what accommodations, aids, or services the student needs to alleviate that impact.

Remember that educational impact can include activities outside of the classroom, such as access to the cafeteria, behavior, athletics, and extracurricular activities.

### **What about mitigating measures?**

The Section 504 team should ignore the effects of mitigating measures when determining whether a student has a disability (step one). However, the Section 504 team should consider the student's use of mitigating measures when determining the student's need for accommodations, aids, or services at school (step two). This includes considering whether the student's use of a mitigating measure, such as medication, is fully under the student's control and whether the student needs any assistance while at school.

### **What is a student has a disability, but does not need accommodations?**

If the student has a disability that substantially limits one or more major life activities, but **does not** need accommodations, aids, or services, the student does not need a Section 504 plan (i.e., they are "technically eligible" under Section 504). However, the student is still protected under Section 504 from discrimination and disability harassment.

## Developing the Section 504 Plan

When developing the Section 504 plan, the Section 504 team should consider what accommodations, aids, or services the student needs to alleviate the impact of their disability.

Accommodations include any adjustments or modifications that allow students with disabilities to access the benefit of their education to the same extent as their peers. These variations should not change the level, content, or performance criteria of the lesson, class, or activity and should not change the reliability and validity of any assignment.

Accommodations should be **individualized** to the needs of the student, and should be **necessary** to provide the student a free appropriate public education. The Section 504 plan should be as **clear and specific** as possible, so that anyone can understand how to implement the plan.

#### **Don't...**

- Assume certain accommodations, such as extra time, are appropriate for every student in every content area
- Assume that everyone has the same definition for all terms, such as “preferential seating” or “extra time to complete assignments”
- Assume that students can—or will—ask for their accommodations
- Use “as appropriate” or “as needed” as part of an accommodation—strive to be as clear and specific as possible
- Check every accommodation on a checklist just to be “safe”—only include accommodations that are necessary for the student
- Assume that the same accommodations are appropriate every year

#### **Do...**

- Think outside the box
- Get the parent involved in the discussion
- Consult with your Section 504 coordinator
- Ask the student

#### **Can the school consider cost or convenience?**

The LEA cannot limit its duty based on cost. However, the LEA is not required to provide the most expensive option available if a less costly accommodation, aid, or service will provide the student a free appropriate public education and allow the student to access and benefit from their education equally with their peers.

## **Implementing the Plan**

#### **At this stage, procedural safeguards include:**

- Notify parents in writing regarding the placement (Section 504 plan)
- Receive parent consent before the initial placement
- Provide parents a copy of their rights/procedural safeguards

#### **When implementing the plan, consider:**

- How does the school inform teachers about Section 504 plans?
- Does everyone know the student’s Section 504 plan who needs to know (e.g., assessment coordinators, volunteers, bus drivers, substitute teachers, coaches, PE teachers)?
- How can the school help teachers, students, and parents understand what is in the Section 504 plan?

### **What if a teacher did not attend the meeting or sign the plan?**

All teachers are required to implement the plan, even if they do not agree with the accommodations or did not participate on the Section 504 team.

### **Re-Evaluate the Student**

The LEA must re-evaluate the student periodically (at least every 3 years). LEAs are encouraged to review Section 504 plans annually, or as needed.

## **Student Discipline | Manifestation Determination**

### **Long-Term Removals**

If the student is being removed 10 or more consecutive days, the school must conduct a manifestation determination.

### **Short-Term Removals**

If the student is removed less than 10 total school days in a school year, no manifestation is required.

If the student is removed for 10 or more total school days in a school year, a manifestation determination may be required. For short-term removals, the school must conduct a manifestation determination when there is a "pattern of exclusion," considering the length of each removal, the total days removed, and the proximity of removals to one another.

## **Manifestation Determination**

When conducting a manifestation determination, a Section 504 team must consider:

1. Was the conduct caused by, or did it have a direct and substantial relationship to, the child's disability?
  2. Was the conduct the direct result of the school's failure to implement the Section 504 plan?
- If the answer to **either** question is yes, the school cannot remove the student for the behavior. Rather, consider revisiting the Section 504 plan and conducting a re-evaluation.

If the answer is no to both questions, the school may implement regular disciplinary procedures.

### **Drugs and alcohol offenses**

- **Section 504:** No manifestation determination required for illegal use or possession of drugs or alcohol at school or school-sponsored activity
- **IDEA:** A manifestation determination is required if removal is over 10 days

### **Best Practices**

- Conduct manifestation determination before 10 cumulative school days in which student has been removed from the classroom
- Take proactive steps to address the student's behavior

- Consider other effective means to address the student’s behavior before removing the student

## Dietary Accommodations and Modifications

A student with a food allergy or intolerances may be eligible under Section 504 as a student with a disability. In addition to accommodations, aids, and services on a Section 504 plan, the student may need special meals.

The U.S. Department of Agriculture (USDA) requires schools to make reasonable modifications to school meals or meal service to accommodate students with disabilities that restrict their diets, such as peanut or lactose-free meals, at no extra charge to families. Work with your school’s kitchen staff when you suspect a student may need special meals. For special meal modifications, the USDA requires a written statement from a licensed medical professional.

OSPI’s Special Dietary Needs Reference Sheet:

<https://www.k12.wa.us/sites/default/files/public/childnutrition/programs/nslbp/pubdocs/specialdietaryneedsreferencesheet.pdf>

## Field Trips and Extracurricular Activities

Schools cannot deny student participation in any program or activity on the basis of disability. Nor may a school request the parent of a student with a disability to accompany their child on a field trip—unless it requests that all parents do so.

Schools should provide any accommodations, aids, and services that a student needs to participate in any school program or activity, even if they might be costly or require staff to be available.

On an individual case-by-case basis, a school may prohibit a student with a disability from participating in an extracurricular activity if it presents an unacceptable risk for the health or safety of the student—but this is a very rare exception. First the school must consider whether safe participation can be assured by providing accommodations, aids, or services or reasonable modifications to the activity.

## Students with Health Conditions

Since the ADA Amendments Act, which became effective in 2009, many students on health plans are now eligible under Section 504. Many services previously provided on a health plan are “related services” under Section 504 and should be incorporated into a student’s Section 504 plan.

The school must provide all disability-related services—including health services—at no cost to parents. Schools should not require parents to provide care a school or during school-sponsored activities. If nursing care is required, the school must provide the staff to provide the



necessary care. If a parent consents to a parent-designated adult (PDA) to provide their child's health-related care, the school should help the parent find school staff who can serve as a PDA.

For students with diabetes, schools should not automatically require a student to attend a non-neighborhood school for diabetes care. Rather, the Section 504 team should use multiple sources of data to make an individualized determination about the health services the student needs and who can provide those services. The Section 504 team can ask the student's health care provider to clarify whether school staff or a PDA can provide or supervise the necessary care.

## Online Resources

Guidelines for Care of Students with Diabetes (OSPI):

<https://www.k12.wa.us/sites/default/files/public/healthservices/pubdocs/diabetes/diabetesmanual-ada.pdf>

DOJ decision re: Children with Diabetes in Alabama (12/09/2013): [www.ada.gov/alabama-LOF.htm](http://www.ada.gov/alabama-LOF.htm)

Q&A on the ADA Amendments of 2008 (OCR): [www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html)

Resource Guide on Students with ADHD (OCR): [www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf)

## Disability Harassment

### **Disability harassment is a form of discrimination**

Under state and federal civil rights laws, schools must protect students from harassment based on any protected class, including disability. Harassing conduct may include verbal acts and name-calling, graphic and written statements, or other conduct that may be physically threatening, harmful or humiliating.

An LEA is responsible for addressing discriminatory harassment about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during classes, at lunch, or on a school bus. In these cases, the obvious signs of the harassment are sufficient to put the LEA on notice.

### **How should schools respond to allegations of disability harassment?**

An LEA must take prompt and appropriate action to investigate or otherwise determine what occurred, even if the student hasn't complained or asked the school to take action. LEAs that receive an allegation of discriminatory harassment may need to respond using the LEA's discrimination complaint and appeal procedures.

If an investigation reveals that discriminatory harassment has occurred, the LEA must take prompt and effective steps to end the harassment, eliminate any hostile environment and its

effects, and prevent the harassment from recurring. These duties are the LEA's responsibility even if the misconduct is also covered by the LEA's bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

### **Follow both your HIB and nondiscrimination procedures**

Most often, two or more different procedures will apply when addressing discriminatory harassment, and it is important to follow each:

- Nondiscrimination (WSSDA Procedure 3210P)
- Sexual Harassment (WSSDA Procedure 3205P)
- Harassment, Intimidation, and Bullying (WSSDA Procedure 3207P)

### **Differences between bullying and discriminatory harassment**

<u>Bullying (HIB)</u>	<u>Discriminatory Harassment</u>
<ul style="list-style-type: none"><li>• HIB Law: RCW 28A.300.285</li><li>• May or may not be discrimination (based on any characteristic)</li><li>• Response might be limited to disciplining the perpetrators</li></ul>	<ul style="list-style-type: none"><li>• Civil Rights Laws</li><li>• A form of discrimination (based on protected class)</li><li>• Often requires a systemic response</li></ul>

## **Athletics**

Schools must provide students with disabilities an equal opportunity to participate in athletic programs. Schools may not exclude otherwise qualified students with disabilities, solely by reason of their disability, from participating in any athletic programs or activities.

### **Accommodations, related aids and services**

If a student is provided services or accommodations under a Section 504 plan, those services or accommodations should also be provided when the student tries out and participates in sports, so long as the accommodations do not fundamentally alter the nature of the sport.

### **Eligibility rules and criteria**

A school must make reasonable modifications to eligibility criteria if it is necessary to avoid discrimination and so long as the modification does not fundamentally alter the nature of the sport.

When determining if a school should waive particular eligibility criteria based on a student's disability, the school should consider the following:

- Is there a direct, causal relationship between the student's disability and their inability to meet the eligibility rule?

- Is the eligibility rule or criteria essential to the sport? Would waiving or altering the rule fundamentally change the nature of the sport?

If the eligibility rule or criteria is required by the Washington Interscholastic Activities Association (WIAA) or other interscholastic activity association, the school should assist the student to appeal the ineligibility through WIAA's hardship appeal process.

## Complaints

Schools can often resolve disagreements or complaints regarding Section 504 informally. Parents and students can also initiate a formal process by:

- Requesting a due process hearing with the LEA
- Filing a written complaint (follow the LEA's Nondiscrimination Procedure, typically 3210P)
- Filing a complaint with Office for Civil Rights (OCR) at the US Department of Education.

For more information about these complaint options, visit: <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/complaints-about-discrimination>

## Learn More. Ask Questions. Get Help.

### Additional resources

Section 504 FAQ (OCR): [www2.ed.gov/about/offices/list/ocr/504faq.html](http://www2.ed.gov/about/offices/list/ocr/504faq.html)

Section 504 Info (OSPI): [www.k12.wa.us/policy-funding/equity-and-civil-rights/section-504-students-disabilities](http://www.k12.wa.us/policy-funding/equity-and-civil-rights/section-504-students-disabilities)

### OSPI Equity and Civil Rights Office

360-725-6162 | [equity@k12.wa.us](mailto:equity@k12.wa.us)  
[www.k12.wa.us/policy-funding/equity-and-civil-rights](http://www.k12.wa.us/policy-funding/equity-and-civil-rights)

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