

SECTION 504 OVERVIEW

Section 504 of the Rehabilitation Act of 1973 is a Civil Rights statute which provides that: “no otherwise qualified individual with disabilities in the United States.....shall, solely by reason of his or her 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....”

WHAT IS SECTION 504

Section 504 is a Federal Civil Rights statute that is designed to eliminate disability discrimination in all programs and activities receiving Federal funding. Since all public school districts receive Federal funds, all public school districts must comply with Section 504. Under Section 504, denying a disabled student a free and appropriate public education (FAPE) constitutes disability discrimination.

WHO IS DISABLED UNDER SECTION 504

In society in general, a person is disabled under Section 504 if: (1) they have a mental or physical impairment which 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. More specifically, major life activities include, but are not limited to the following: walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

In a school setting, Section 504 applies to students who (1) have a mental or physical disability or condition; (2) which significantly limits a major life activity, such as learning, which substantially affects their ability to participate in and/or benefit from school; and (3) because of the disability, require accommodations, special instruction, and/or services in order to participate in and/or benefit from school as adequately as their nondisabled peers.

1. It is essential for the Section 504 Team to address all parts of the Section 504 eligibility determination process. A disability by itself does not qualify a student for protection under Section 504.
2. The disability must substantially limit the student's ability to participate in and/or benefit from school as adequately as their nondisabled peers.
3. Additionally, the student must require accommodations, special instruction, and/or services in order to have their needs met as adequately as those of their nondisabled peers.

For example, a student may have a disability, but may have developed compensatory skills that correct for or reduce the impact of the disability. An example is a student with an Attention Deficit Disorder who has developed study habits and memory strategies so that they are able to earn A's and B's in general education classes. A disability exists, but the student's ability to participate in and benefit from school is not substantially limited. Therefore, the student is not deemed disabled or eligible for accommodations or services under Section 504.

Similarly, a medical diagnosis does not automatically qualify a student for services under Section 504. The condition must substantially limit the student's ability to participate in and/or benefit from school. A student with a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not limit the student's ability to participate in and/or benefit from school, or simply results in some minor limitation.

WHAT IS MEANT BY CURRENT PHYSICAL OR MENTAL IMPAIRMENT

A physical or mental impairment means any physiological or psychological disorder or condition. The definition of physical or mental impairment under Section 504 is broad. It includes students with life-threatening health conditions, and is not limited to any specific diseases or categories of medical conditions. Life threatening conditions are those that will put a student in danger of death during the school day if a medication, treatment order, or nursing plan is not in place.

The term “current physical or mental impairment or condition” is also significant in a school setting. In a school setting, to be eligible under Section 504 the student must have evidence of a *current* physical or mental impairment or condition which significantly limits their ability to participate in and/or benefit from school. While past diagnosis or past placement in a special program should be considered when determining whether a student has a disability under Section 504, they do not determine current disability.

DEFINE “SUBSTANTIALLY LIMITS”

“Substantially limits” means significantly restricts as to the condition, manner, or duration under which a student can perform a major life activity as compared to how a nondisabled age/grade peer can perform the same activity. As a general rule, a student with a physical or mental impairment who is able to participate in and/or benefit from their education program (e.g., attend school, achieve passing grades, advance from grade to grade, and/or meet age/grade appropriate standards of personal independence and social responsibility) without the provision of accommodations, special instruction and/or services is not a disabled student under Section 504.

HOW DOES THIS RELATE TO A SCHOOL SETTING

If it is determined that a physical or mental disability exists, the next step is to determine whether the disability substantially limits the student’s ability to participate in or benefit from school. Determining whether the student’s disability constitutes a significant impairment is a critical next step. A student may have a disability, but may have developed compensatory skills that reduce the impact of the disability in the educational setting. An example is a student with a current Attention Deficit Disorder who has developed study habits and memory strategies so that they are able to earn A’s and B’s in general education classes. The disability exists, but learning is not significantly affected, (i.e., the student’s ability to participate in or benefit from school is not substantially affected). Therefore, the student is not disabled and is not eligible for accommodation under Section 504.

WHAT IS A FREE APPROPRIATE PUBLIC EDUCATION UNDER SECTION 504

A free and appropriate public education is a program that is designed to meet a disabled student’s individual educational needs and is based upon procedures that satisfy Section 504’s identification, evaluation, 504 Plan, and due process requirements. An appropriate education can consist of education in regular classes, education in regular classes with accommodations, special instruction, and/or services, special education, or a combination of such services. Basically, any service that a student needs to participate in and benefit from school as adequately as their nondisabled peers. These may include, but are not limited to, the following: school health services, counseling, environmental adaptation, instructional adaptation, behavioral accommodations, and transportation.

WHAT DOES “APPROPRIATE” MEAN

“Appropriate” means designed to meet the individual educational needs of a disabled student as adequately as the needs of nondisabled students are met. It does not mean that the district must maximize a disabled student’s potential or provide “the best” educational program that it can design for a disabled student. It means that the district must provide sufficient individualized services to enable a disabled student to receive educational benefit (i.e., not maximum benefit or minimal benefit).

WHO CAN REFER A STUDENT FOR A SECTION 504 EVALUATION

Any person can refer a student for evaluation under Section 504. Parents, guardians, and school staff can refer a student for evaluation if they know or suspect that, due to a physical or mental impairment, that that student needs accommodations, special instruction, and/or services to participate in or benefit from their education program. If an individual believes they are observing a student with a disability which substantially limits their ability to benefit from and/or participate in school, they should contact the building Psychologist to discuss a possible Referral for a 504 evaluation.

WHAT SHOULD A DISTRICT DO WHEN IT RECEIVES A SECTION 504 REFERRAL

After receiving a Section 504 referral, a district should decide whether to evaluate the student and must notify the student's parent or guardian of its decision. As a general rule, a district should evaluate a referred student if the district knows or suspects that the student, because of a disability, is not attending school, achieving passing grades, advancing from grade to grade, meeting age/grade appropriate standards of personal independence or social responsibility, or otherwise needs accommodations, special instruction, and/or services to participate in or benefit from their educational program.

WHAT IS THE EVALUATION PROCESS FOR SECTION 504

The determination of current disability is done by a team of persons knowledgeable about the student and the suspected disability. There are no specific tests or procedures specified for a Section 504 evaluation. However, if formal tests are used they must be validated for the specific purpose for which they are used, be administered by trained personnel in conformance with the instructions provided by their producer, and be selected and administered to ensure that the test results accurately reflect whatever factors the test purports to measure.

Evaluations under Section 504 are individually designed. A Section 504 evaluation may be broad (including aptitude and achievement data, medical and psychological data, social and cultural information, etc.) or narrow (medical data). A Section 504 evaluation may be conducted by the district or by an outside agency or private practitioner. It is the responsibility of the Section 504 Team to determine the scope of each student's Section 504 evaluation. As a general rule, the scope of a student's Section 504 evaluation should be broad enough to enable the Section 504 Team to determine whether a student is disabled under Section 504 and, if so, what accommodations, special instruction, and/or services the student needs to receive FAPE.

WHAT IS A 504 TEAM

A Section 504 Team makes decisions regarding the evaluation and placement of students under Section 504. For example, a Section 504 Team determines the scope of Section 504 evaluations, decides which students are disabled under Section 504, develops Section 504 Plans, and makes "manifestation determinations" for purposes of disciplinary exclusion from school.

WHO SHOULD BE ON A SECTION 504 TEAM

The membership of a Section 504 Team will vary depending upon the needs of each student. For example, a Nurse may be on the Section 504 Team of a student with a life threatening health condition, and a Psychologist may be on the Section 504 Team of a student with a behavioral disorder. The composition of a Section 504 Team is fluid, and may change within a school year or between school years as a student's needs and services change. A Section 504 Team must consist of at least two people, and must include persons knowledgeable about the student, the meaning of the student's current evaluation data, and placement options.

WHAT HAPPENS AFTER THE STUDENT IS EVALUATED

If it is determined that a student has a disability which substantially limits their ability to benefit from or participate in school, as adequately as his/her nondisabled peers, the next step is the development of a Section 504 Plan. Section 504 requires that persons with disabilities be provided accommodations, special instruction, and/or services that are *as effective* as those provided to

nondisabled persons, and that allow the student to fully participate in the general education classroom. Section 504 requires the district to provide accommodations, special instruction, and/or services that remove barriers that stand in the way of students demonstrating what they know and what they can do. The needed accommodations, instruction, and/or services would be identified in the student's Section 504 Plan.

A Section 504 Plan is a written plan that describes the accommodations, special instruction and/or services that the Section 504 Team determines a student needs to receive FAPE. The content of a Section 504 Plan is fluid and may change within a school year or between school years as a student's needs and services change. For a student whose only disability is a life threatening health condition, an individual health plan or nursing care plan may serve as the student's Section 504 plan. A district must provide the services identified in a student's Section 504 Plan.

Placement on a Section 504 Plan means the accommodations, special instruction, and/or services that a student needs to receive FAPE. Placement decisions under Section 504 must be documented, based upon a student's evaluated needs, made by persons knowledgeable about the student, the meaning of the student's evaluation data, and placement options. In addition, placement decisions must ensure that disabled students are educated in the least restrictive environment (LRE).

WHAT DUE PROCESS RIGHTS DO PARENTS AND GUARDIANS HAVE UNDER SECTION 504

Section 504 gives parents and guardians the right to challenge district decisions regarding the identification, evaluation, and educational placement of their children. Under Section 504, a district must notify a student's parent or guardian before it takes any action regarding the identification, evaluation, or placement of their child, and provide the parent or guardian an opportunity to challenge the action if they disagree. "Any action" includes a decision not to evaluate a student, and denial of placement". The minimum necessary due process rights include: prior notice of any action; a right to inspect records; an impartial hearing with a right to representation by counsel; and a review procedure.

WHEN MUST PARENTS OR GUARDIANS PROVIDE CONSENT UNDER SECTION 504

Under Section 504, a district must obtain parent or guardian consent in two circumstances: before a student's initial evaluation (the first time a student is evaluated by any district) and before a student's initial placement (the first time a student is placed on a Section 504 Plan in any district). If a parent or guardian refuses consent to either initial evaluation or initial placement, a district may, but is not required to initiate a Section 504 Due Process Hearing to override the refusal to consent. A district must notify a parent or guardian, but need not obtain consent, before it reevaluates, or significantly changes a student's placement.

HOW IS SECTION 504 ENFORCED

The U.S. Department of Education enforces Section 504 through the Office for Civil Rights [OCR]. OCR investigates individual complaints of disability discrimination, including complaints that a district is denying a disabled student FAPE. OCR also provides training and technical assistance to state education agencies, educational service districts, schools districts, and parents. OCR's focus is on the process a district follows to identify, evaluate, and provide an educational placement to a disabled student, and to provide procedural due process to the student's parent or guardian. Except in extraordinary circumstances, OCR will not review the result of individual placement and other educational decisions, as long as a district complies with Section 504's procedural requirements regarding identification, evaluation, placement, and due process.

Parents or guardians who disagree with the identification or evaluation of their child, or with the Section 504 Plan their child is being provided, are encouraged to attempt to resolve their disputes through

mediation. There are, in addition, other options, including filing a complaint in writing or requesting an impartial Due Process Hearing through the District's Director of Student Services, who has been designated to coordinate the District's Section 504 compliance efforts; filing a complaint with OCR;

or filing a complaint in Federal Court. Parents are not required to file a complaint prior to initiating a Due Process Hearing.

WHO CONDUCTS A SECTION 504 DUE PROCESS HEARING

A district should select a Hearing Officer who is impartial (e.g., has no professional or personal interest that would bias their judgment of the case) and who has some training in Section 504 regulations and requirements of FAPE.

THE BOTTOM LINE

Once a district has determined that a student is disabled under Section 504, the district must provide whatever services it decides the student needs to participate in and benefit from their educational program. As a general rule, a district is under no obligation to provide a service that a student's parents/guardians, or physician requests unless, in the district's determination, the student needs the service.

Resource: *A Parent & Educator Guide to Free Appropriate Public Education*: Jim Rich, Director of Program Development and Review, Puget Sound ESD, Office of Special Services, in conjunction with The Office for Civil Rights, November 2002