

## Parent Information

# Section 504

*This guide describes the requirements of Section 504 of the Rehabilitation Act of 1973 for each public school district to provide a free appropriate public education (FAPE) to students with disabilities. This guide is designed to assist parents to better understand Section 504.*

*Please feel free to contact the Section 504 Coordinator at the Iowa Department of Education for further information or assistance.*



## **What is Section 504?**

Section 504 is a federal civil rights law that is designed to eliminate disability discrimination in programs and activities that receive federal funds. 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 appropriate public education is disability discrimination.

**A school-aged student is a disabled student under Section 504 for purposes of FAPE if the student:**

### ***Has a physical or mental impairment***

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

*The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. A physical or mental impairment may be any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The list of specific diseases and conditions that may constitute a physical or mental impairment is not exhaustive.*

### ***That substantially limits***

*There is no single formula or scale that measures substantial limitation. A physical or mental impairment substantially limits a major life activity for a student if the impairment substantially limits the student's ability to perform a major life activity as compared to the student's non-disabled age/grade peers. An impairment need not prevent, or significantly or severely restrict, a student in performing a major life activity to be considered substantially limiting. If, however, the impairment is minor, it does not qualify under Section 504. Mere diagnosis of an impairment is not enough; the impairment must be substantially limiting.*

*As a general rule, a student with a physical or mental impairment who is able to participate in or benefit from district education program, without the provision of special education or related aids or services, is not a disabled student under Section 504 for purposes of FAPE.*

### ***One or more major life activity***

*Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Major life activities also include other general activities such as eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. In addition, major life activities include major bodily functions such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The above list of major life activities is not exhaustive; a major life activity or function not specifically listed above may be a major life activity. For example, the ability to meet the standards of personal independence and social responsibility expected of one's age and cultural group is a major life activity for a school-aged student. In addition, the ability to participate in and benefit from school is a major life activity for a school-aged student.*

**The meaning of "disabled student" under Section 504 was substantially broadened by the Americans with Disabilities Amendments Act of 2008, which became effective on January 1, 2009.** Congress amended the ADA in 2008 in the following specific ways to create "clear, strong, consistent, enforceable standards" to broaden who qualifies as a "disabled person" under Section 504 and the ADA. Here is what the changes mean for schools:

1. **Interpret the term "physical or mental impairment" broadly:** The term "physical or mental impairment" is not limited to any specific diseases or categories of medical conditions;
2. **Interpret the term "substantially limits" broadly:** An impairment need not prevent, or significantly or severely restrict a student in performing a major life activity to be considered "substantially limiting." Compare a student to his or her non-disabled age/grade peers to determine whether an impairment substantially limits a major life activity for the student;
3. **Interpret the term "major life activities" broadly:** Just about any activity that is of importance to a school-aged student's daily life now qualifies as a "major life activity" under Section 504 and an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability under Section 504 or the ADA;
4. **Disregard mitigating measures used by a student:** Mitigating measures used by a disabled student to manage his or her impairment or lessen the impact of his or her impairment (e.g. medication, medical devices, related aids and services, etc.) should be disregarded when determining whether a student's impairment constitutes a disability under Section 504 or the ADA;
5. **Consider whether a temporary impairment is a disability:** A temporary impairment (with an actual or expected duration of six months or less) is a disability under Section 504 and the ADA if it is severe enough that it substantially limits a major life activity for a student. The duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity for a student should be the key considerations; and
6. **Consider whether an impairment that is episodic or in remission is a disability:** An impairment that is episodic or in remission (e.g. epilepsy, cancer, bipolar disorder, etc.) is a disability under Section 504 and the ADA if it substantially limits a major life activity for a student when active.

### **What is a Free Appropriate Public Education Under Section 504?**

A free appropriate public education (FAPE) is an education that is designed to meet a disabled student's individual educational needs and is based upon procedures that satisfy Section 504's identification, evaluation, placement, and due process requirements. An appropriate education can consist of education in regular classes, education in regular classes with related aids or services, special education, or a combination of such services. The definition of related aids and services under Section 504 is broad and includes any service that a student needs to participate in and benefit from a district's education program. Related aids and services include but are not limited to the following: school health services; counseling; environmental, instructional and behavioral accommodations; and transportation.

### **What Does "Appropriate" Mean?**

Under Section 504, appropriate means designed to meet the individual educational needs of a disabled student as adequately as the needs of non-disabled students are met. It does not mean that a district must maximize a disabled student's potential or provide "the best" education program that it can design for a disabled student. It means that a district must provide sufficient individualized services to enable a disabled student to receive educational benefit (i.e., not maximum benefit, not minimal benefit, some 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 should refer a student for evaluation if they suspect that, due to a disability, the student needs special education or related aids or services to participate in or benefit from a district's education program.

### **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, advancing from grade to grade, meeting the standards of personal independence or social responsibility expected of his or her age or cultural group, or otherwise needs special education or related aids or services to participate in or benefit from the district's education program.

### **What is an Evaluation Under Section 504?**

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, and more) or narrow (medical data). A Section 504 evaluation may be conducted by a district or conducted by an outside agency and reviewed by a district. It is the responsibility of a district 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 district to determine whether a student is disabled under Section 504 and, if so, what special education and related aids and services the student needs to participate in and benefit from the district's education program.

### **What Placement Procedures Does Section 504 Require?**

Placement under Section 504 means services -- the regular or special education and related aids and services that a student needs to receive FAPE. Placement decisions under Section 504 must be documented, based upon a student's needs, as shown by evaluation, and 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 appropriate placement.

### **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, or educational placement of their child. 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.

### **Must Parents or Guardians Consent Prior to Initial Evaluations and Initial Placements Under Section 504?**

**Yes.** Under Section 504, a district must obtain parent or guardian consent in two circumstances: before a child's initial evaluation (the first time a child is evaluated by any district) and before a child's initial placement (the first time a child 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.

### **What is a Section 504 Plan**

A Section 504 plan, preferably in writing, that describes the educational and related aids and services that a district determines a disabled student needs to receive a 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. A district must provide the services identified in a student's Section 504 plan.

For a student whose only disability is a life threatening health condition, an individual health plan or an emergency or nursing care plan may serve as the student's Section 504 plan. The process that a district follows to develop an individual health plan or an emergency or nursing care plan to meet the needs of a disabled student must be based on evaluation and placement procedures that satisfy the requirements of Section 504, and must provide procedural due process to the student's parent or guardian.

### **What Is a Section 504 Team?**

A Section 504 team makes decisions regarding the evaluation and placement of students under Section 504. The 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. A district may have a district-level Section 504 team, a building-level Section 504 team, or a combination of both district-level and building-level Section 504 teams.

### **Who Should Be on a Section 504 Team?**

The membership of a Section 504 team will vary depending upon the needs of each student. 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. Parents, and the child if age appropriate, should be included on the team after district determination of 504 eligibility. Parent/student input is necessary and important as accommodations and district/school, student and parent responsibilities/expectations are outlined in the plan.

### **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'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. The proper forum for pure educational disputes, in which a district has followed the correct process to make an educational decision but the parents or guardian disagree with the result of the decision, is a Section 504 due process hearing.

### **Parent Disagreement**

If a parent disagrees with a Section 504 plan or has a grievance with accommodation implementation and/or follow-through the parent may do the following:

- Contact the building administrator and/or District Section 504 Coordinator
- Contact the Area Education Agency (AEA) for AEA Mediation. Information can be found here: [http://www.educateiowa.gov/search/Resolution\\_Facilitation](http://www.educateiowa.gov/search/Resolution_Facilitation)
- If resolution is not a result, the parent should follow district Section 504 grievance procedures or due process procedures. Please note there is no requirement to use mediation before using either of these procedures.

### **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 his or her judgment of the case) and has some training in Section 504 and how it applies to FAPE.

### **The Bottom Line**

Once a district has determined that a student is a qualifying student under Section 504 for purposes of FAPE, the district must provide whatever services it decides the student needs to participate in and benefit from the district's education program. As a general rule, a district is under no obligation to provide a service that a student's parent or guardian or doctor requests unless, in the district's determination, the student needs the service to participate in and benefit from its education program.

