

# What is Section 504?

The Rehabilitation Act of 1973 is a civil rights legislative act that protects the rights of persons with disabilities. Section 504 provides that “no otherwise qualified individual with disabilities in the United States... shall solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal Assistance...” **Under section 504, school districts have the responsibility to identify, evaluate, and to afford access to appropriate educational services and procedural safeguards for these individuals.**

Section 504 of the Rehabilitation Act of 1973 is a federal statute (anti-discrimination law), which protects the rights of individuals with disabilities to equal opportunity in programs and activities which receive federal funds.

Section 504 is intended to level the playing field for individuals with disabilities so, for example, students can fully participate in school.

## What does Section 504 require schools to do?

- A complete study to learn about the student’s disability and needs. This is known as an educational evaluation.
- Provide special or regular education and support services that meet your child’s needs. This is done through a “Section 504 Plan,” which is also known as an Individualized Accommodation Program (IAP).
- Ensure that your child receives a Free Appropriate Public Education (FAPE).
- Teach your child in the regular classroom unless their needs cannot be met there even with support services. Similar to IDEA, Section 504 requires schools to educate children with disabilities in the Least Restrictive Environment (LRE). • Make changes in the way the school does things to take into account your child’s needs. These changes are called accommodations. Examples would be things like, letting a child who has trouble writing use a computer or providing a student with a copy of class notes.

## Does Section 504 require evaluation?

- If there is a reason to believe that because of a qualifying disability, a student needs accommodations, the school district must evaluate the student, develop and implement an accommodation plan as warranted based on the student’s individual needs. The Section 504 Committee shall consider all relevant information regarding the student to determine whether or not he/she is disabled under Section 504. Relevant information could include but is not limited to: school records, medical records, interview, classwork, observations, etc.

## Eligibility for Section 504

### A person eligible for Section 504 protections/services:

- has a **physical or mental impairment** that **substantially limits** one or more **major life activity**
- has a **record of** such an impairment, or
- is **regarded as** having such an impairment.

### Under Section 504, what is a major life activity?

- Standing
- Reading
- Concentrating
- Breathing
- Communicating
- Hearing

*\*\*\*this list is not all inclusive*

### What does “substantially limits a major life activity” mean?

An impairment that prevents a person from performing a life activity that the average student of approximately the same age can perform OR if the life activity is “more difficult to perform” as compared to the average student of approximately the same age.

## Determination of Eligibility

To determine eligibility under Section 504 the committee must consider all the following questions:

1. Does the learner have a physical or mental impairment?
2. Does the physical or mental impairment affect one or more major life activities including major bodily functions?
3. Does the physical or mental impairment substantially limit a major life activity? It is important to specifically identify what the substantial limitations are and how they impact learner performance and progress.
4. Does the student require Section 504 services in order for his/her educational needs to be met as adequately as those of non-disabled peers?

## Section 504 Referral

- The process under Section 504 begins with a referral.
- The school district will take measures to identify and locate students with a disability through the Care Team or SST (Student Support Team).
- If a staff member or the Care Team believes that a child may have a qualifying disability, he/she will make a referral for a 504 evaluation.
- A parent or guardian may also request a 504 evaluation for student by notifying the campus administrator, counselor, or 504 Coordinator. Such a request is best made in writing.

# Section 504 Questions and Answers

**Q: Are all schools required to adhere to Section 504?**

A: Yes. All schools that receive any federal financial assistance must comply with Section 504 of the Rehabilitation Act of 1973.

**Q: Does a physician's diagnosis of ADD/ADHD automatically result in a student being eligible for Section 504?**

A: No. A physician's diagnosis should be considered as one piece of information when evaluating the student. However, a physician's diagnosis alone does not automatically result in eligibility for Section 504.

**Q: Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?**

A: No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act, in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such. In the Amendments Act Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

**Q: Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?**

A: No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

**Q: Are there any impairments which automatically mean that a student has a disability under Section 504?**

A: No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

**Q: Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?**

A: Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability.

**Q: When a student exits special education should they be considered for Section 504 eligibility?**

A: Yes. Section 504 eligibility is a committee decision and will depend on the unique needs of the student. Many exiting special education students will not require Section 504 accommodations or services. If the committee decides to consider Section 504 eligibility, a referral would be made to the Section 504 committee for determination.

**Q: Does a physician's diagnosis of Dyslexia automatically result in a student being eligible for Section 504?**

A. No, a diagnosis should be considered as one piece of documentation when evaluating the child. However, a diagnosis alone does not automatically result in eligibility for Section 504.

**Q. Are there impairments that automatically qualify someone for Section 504?**

A. No, each decision on eligibility is made on an individual basis.

**Q. Are there invalid reasons for a Section 504 plan**

A. There are a number of invalid reasons for placing a student on a Section 504 plan, including the following:

- The parent and/or doctor presents the school with a disability diagnosis and a 504 plan is written without the 504 committee first determining if the disability substantially limits a major life activity.
- The doctor prescribes or writes a note requesting placement into 504. This is only one piece of documentation to be used in determining eligibility by the 504 committee.
- A student is placed on a 504 plan solely because the parent wants the student to have additional time on college qualifying examinations.
- A student fails to qualify for special education support and is automatically signed up for a 504 accommodation plan without first qualifying the student based on Section 504 criteria.
- The student is exited from the special education program and placed into 504 with accommodations when there has not been a 504 committee placement designation or meeting.

**Q. Can my child be disciplined if he or she is eligible for Section 504?**

- Students eligible for Section 504 may still be disciplined in the same manner as their peers, unless the discipline becomes a significant change in placement.
- A change in placement is when the student is suspended, expelled, placed in an In-School Suspension program or the District Alternative Education Program for more than 10 days. • In this case a Section 504 committee must determine whether the student's conduct is a manifestation, or caused by, the identified disability.
- If it is a manifestation, the student remains in his or her placement.
- If the conduct is not a manifestation, the student will receive the same discipline that a nondisabled student would receive.
  - in cases where the student is under the influence of drugs or alcohol at school or a penal code designated offense has occurred, the student is not entitled to the rights provided under a manifestation determination.

**Q. What can parents do if they are dissatisfied with the way schools are serving students eligible for Section 504 protections?**

- Parents have the right to appeal any action of the school with regard to your child's identification, evaluation, or placement under Section 504 to the District Central Administration Office. (34 CFR 104.36)
- Parents have a right to present a grievance or complaint through the District's local grievance process. The District will investigate the situation, take into account the nature of the complaint and all necessary factors, and respond appropriately to you within a reasonable time.
- If a parent still does not agree following a local appeal they are entitled to an impartial due process hearing if they wish to contest any action of the District. They have the right to participate personally at the hearing, and to be represented by an attorney, if they wish to hire one.
- Parents may contest an action taken by the Section 504 Committee by means of an impartial due process hearing. Parents must submit a written Notice of Appeal to the District Section 504 Coordinator. A date will be set for the hearing and an impartial hearing officer will be appointed.
- If parents disagree with the decision of the hearing officer, they have a right to seek relief in state or federal court as permissible by law.
- Parents also have a right to file a complaint with the Office of Civil Rights (OCR) of the Department of Education.
  - *There is a difference in not agreeing with a 504 decision and not agreeing with a discipline decision. The appeal process is different for each of these programs.*

**Q: Who could I contact for additional information about Section 504?**

A: Contact the campus 504 Coordinator at your student's school OR You may also contact:

Misty Henson  
Director of Special Programs  
708 11<sup>th</sup> Place  
Big Spring, Texas 79720  
432-264-3633  
mhenson@bsisd.esc18.net