



# **Section 504 Guidance Document**

## **Mississippi Department of Education**



## **MISSISSIPPI DEPARTMENT OF EDUCATION SECTION 504 OF THE REHABILITATION ACT OF 1973**

### **Overview of Section 504**

Congress prohibited discrimination against students with disabilities in the Rehabilitation Act of 1973, in a segment most often referred to as “Section 504.” This is a broadly worded prohibition that covers both children and adults. The principles enumerated in this section were later expanded and serves as the basis for the 1990 Americans with Disabilities Act (ADA).

Additionally, the ADA Amendments Act of 2008 also amended some definitions of Section 504. Section 504 of the Rehabilitation Act is a Federal civil rights law and prohibits discrimination by local education agencies (LEA) receiving Federal assistance against students with disabilities. Included in the U.S. Department of Education’s regulations for Section 504 is the requirement that students with disabilities be provided with a Free Appropriate Public Education (FAPE). These regulations require identification, evaluation, and provision of appropriate services, and procedural safeguards in every public school in the United States.

Section 504, as amended, prohibits discrimination against individuals whose physical or mental impairment substantially limits one or more major life activities, including, but not limited to:

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Working
- Learning
- Concentrating
- Standing
- Lifting
- Bending
- Eating
- Reading
- Thinking
- Communicating

The U.S. Department of Education (USDE), Office of Civil Rights (OCR) provides compliance oversight for Section 504.

## Section 504 Requirements

### Child Find Obligations

An LEA shall identify and locate every qualified student under Section 504 who is not receiving FAPE and take appropriate steps to notify students and their parents or guardians. An LEA that operates a public elementary or secondary education program or activity shall annually: (a) undertake to identify and locate every qualified student with a disability residing in the LEA's jurisdiction who is not receiving a public education; and (b) take appropriate steps to notify students with disabilities and their parents/guardians of the LEA's duty.

The LEA should keep in mind the obligation to initiate an evaluation of a child suspected disability in accordance with 34 C.F.R. §104.35 - Evaluation and Placement. Because of the LEA requirement to locate students who may qualify for Section 504 services and supports, the obligation to evaluate may not always be triggered by a parent's request to do so. The obligation to evaluate may be triggered by the student's performance, behavior, or otherwise obtaining indications that the child may have a disability.

The Federal Regulations do not prescribe specific Child Find activities that an LEA must take. However, the LEA must take general actions such as providing public awareness and keep a record of children enrolled in other educational programs (e.g. early childhood centers, private schools) in order to fulfill its child find responsibilities.

Child Find for homeless students and students who are parentally placed in private school falls under the jurisdiction of the LEA that would be assigned based on residence.

### FREE APPROPRIATE PUBLIC EDUCATION

34 C.F.R. §104.33

An LEA that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified student with a disability who falls in the LEA's jurisdiction, regardless of the nature or severity of the student's disability.

### FREE EDUCATION

Free education is the provision of educational and related services without cost to the student with disability or to his or her parents or guardian, except for those fees that are imposed on non-disabled students or their parents or guardian. It may consist either of the provision of free services, or payment for the costs of the placed or referred student with disabilities for aid, benefits, or services other than those that the LEA operates or provides, in order to meet the requirements of Section 504. Nothing in Section 504 relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a student with disability.

### APPROPRIATE EDUCATION

Appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met. An LEA may

place or refer a student with disabilities for aid, benefits, or services other than those that it operates or provides, in order to meet the requirements of Section 504. If so, the LEA remains responsible for ensuring that the requirements of Section 504 are met with respect to any placement or referral.

**TRANSPORTATION**

If an LEA places or refers a student with disabilities for aid, benefits, or services other than those that it operates or provides, in order to meet the requirements of Section 504, the LEA shall ensure that adequate transportation is provided to and from the aid, benefits, or services at no greater cost than would be incurred by the student or his or her parents or guardian if the student were placed in the aid, benefits, or services operated by the LEA.

**RESIDENTIAL PLACEMENT**

If a public or private residential placement is necessary to provide a free appropriate public education to a student with disability because of his or her disability, the placement, including non-medical care and room and board, shall be provided at no cost to the student or his or her parents or guardian.

**PLACEMENT OF STUDENTS WITH DISABILITIES BY PARENTS**

If an LEA has made available a free appropriate public education to a student with disability and the student's parents or guardian choose to place the student in a private school, the LEA is not required to pay for the student's education in the private school. Disagreements between a parent or guardian and an LEA regarding whether the LEA has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to due process procedures.

**Intersection of Individuals with Disabilities Education Act (IDEA) and Section 504**

**FAPE Comparison: IDEA and Section 504**

IDEA	Section 504
Enforced by the Office of Special Education and Rehabilitative Services (OSERS).	Enforced by the Office of Civil Rights (OCR).
Focuses on special education services for children with disabilities and the related rights afforded to eligible students and their parents.	Focuses on the nondiscrimination rights of students as well as other individuals with disabilities who are not students, such as family members with disabilities and members of the public with disabilities seeking information from, or access to, the services, programs, and activities of the public school.
Disability under the IDEA means a child who has been evaluated in accordance with IDEA requirements as having a specified disability and needs special	Disability under Section 504 requires that an individual with a disability has a physical or mental impairment that

<b>IDEA</b>	<b>Section 504</b>
education and related services because of that disability.	substantially limits a major life activity or bodily function.
The IDEA’s implementation regulations include 13 disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness.	Section 504 has no categories of disabilities and there is no requirement that an individual need special education and related services under Section 504 to be considered an individual with a disability. However, a child who has a disability who requires only a related service could be considered an individual with a disability for purposes of Section 504 and would be entitled to FAPE services under Section 504.

In some ways, Section 504 is similar to IDEA. Both involve rights, evaluation, an individualized plan, follow-up, and reevaluation. There are, however, two very important differences:

1. Section 504 is a civil rights law that ensures accommodations for equal access to services that non-disabled students receive in the general classroom, whereas IDEA involves individualized instruction by specially trained teachers; and
2. IDEA provides supplemental funding for specially designed instruction to individuals with disabilities, whereas Section 504 provides no additional funding.

Both Section 504 and the IDEA contain requirements for FAPE for students with disabilities, but there are some differences. FAPE is a statutory term under the IDEA. LEAs are required to develop an individualized education program (IEP) for each eligible student with a disability, which outlines the student’s program for special education and related services.

All elementary and secondary school students who are qualified students with disabilities, as defined by Section 504, are entitled to FAPE. Under Section 504, FAPE is (1) the provision of regular or special education and related aids and services that are (2) designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met, and (3) are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards

### **Program Comparison: Individualized Education Plan (IEP) vs. Section 504 Plan**

	<b>IEP</b>	<b>Section 504</b>
<b>Basic Description</b>	A blueprint or plan for a child’s special education experience at school.	A blueprint or plan for how a child will have access to learning at school.
<b>What It Does</b>	Provides individualized special education and related services to meet	Provides services and changes to the learning environment to meet the needs

	<b>IEP</b>	<b>Section 504</b>
	the unique needs of the child. These services are provided at no cost to parents/guardians.	of the child as adequately as other students. As with IEPs, a 504 plan is provided at no cost to the parents/guardians.
<b>What Law Applies</b>	The <b>IDEA</b> is a federal special education law for children with disabilities.	<b>Section 504</b> of the Rehabilitation Act of 1973. This is a Federal civil rights law to prevent discrimination against people with disabilities.
<b>Who is Eligible</b>	There are two requirements to receive an IEP:	There are two requirements to receive a 504 plan:
	1. A child has one or more of the 13 specific disabilities listed in IDEA.	1. A child has any disability, which can include many learning and attention issues.
	2. The disability must affect the child’s educational performance and/or ability to learn and benefit from the general education curriculum, leading to the need for specialized instruction.	2. The disability must substantially limit a major life activity. Section 504 has a broader definition of a disability than IDEA. Children who do not qualify for an IEP may still qualify for a Section 504 plan.
<b>Independent Educational Evaluation</b>	Parents have the right to request the LEA pay for an independent educational evaluation (IEE) by an outside expert.	Parents do not have the right to request an independent educational evaluation (IEE).
<b>Who Creates the Program/ Plan</b>	There are strict legal requirements about who participates. An IEP is created by an IEP team that must include: <ul style="list-style-type: none"> <li>• The child’s parent/guardian</li> <li>• At least one of the child’s general education teachers</li> <li>• At least one special education teacher</li> <li>• District or school administrator who has authority to allocate resources</li> <li>• If the evaluation process is being discussed, an interpreter of evaluation results such as a school psychologist or other specialist who can interpret results</li> </ul>	A 504 plan is created by a team of people who are knowledgeable about the child and who understand the evaluation data and special services options. This might include: <ul style="list-style-type: none"> <li>• The child’s parent/guardian</li> <li>• General or special education teachers</li> <li><input type="checkbox"/> School administrator</li> <li><input type="checkbox"/> Other staff who can contribute to discussion about the child and/or the child’s needs</li> </ul>
<b>What is in the Program/ Plan</b>	<b>An IEP generally includes the following:</b>	<b>A 504 plan generally includes the following:</b>
	The child’s present levels of academic and functional performance - how he/she is currently doing in school	Specific accommodations, supports, and/or services and the location of such for the child.

	<b>IEP</b>	<b>Section 504</b>
	Annual education goals for the child and how the school will track his/her progress	Names of who will provide each service
	The services the child will receive - this may include special education, related, supplementary, and extended school year services	Name of the person responsible for ensuring the plan is implemented
	Timing of services - when they start, how often they occur, and how long they last	
	Any accommodations - changes to the child's learning environment	
	Any modifications - changes to what the child is expected to learn or know	
	How the child will participate in standardized tests	
	How the child will be included in general education classes and school activities	
<b>Notice of Committee Meeting</b>	Notice of IEP committee meetings must be provided. Meetings must be held at a mutually agreed on time and place.	Notice of Section 504 committee meetings should be provided. Notice does not have to be in writing but most schools do so anyway as best practice.
<b>Prior Written Notice</b>	When a change of placement or services is requested, the school must provide prior written notice before the implementation of any actions discussed in the IEP meeting. Notice is also required for any IEP meetings and evaluations.	The school must notify parents about an evaluation or a "significant change" in placement. Notice doesn't have to be in writing, but most schools do so anyway as best practice.
	Parents also have "stay put" rights when invoked according to the appropriate procedures.	Not directly addressed in the law, but OCR has provided guidance for best practice.
<b>Parent Consent</b>	A parent must consent in writing for the school to evaluate a child. Parents must also consent in writing before the school can provide services in an IEP.	A parent's consent is required for the LEA to evaluate a child.
<b>How Often the Plan is Reviewed and Revised</b>	The IEP team must review the IEP at least once a year.	The rules vary by state. In Mississippi, it is best practice to review the child's 504 plan annually.
	The student must be reevaluated every three years to determine whether services are still needed.	In Mississippi, it is best practice to reevaluate every three years or when needed.
<b>How to Resolve Disputes</b>	IDEA gives parents several specific ways to resolve disputes (usually in this order): <ul style="list-style-type: none"> <li>• Mediation</li> <li>• Due Process Complaint</li> <li>• Resolution Session</li> <li>• Civil Lawsuit</li> <li>• Formal State Complaint</li> </ul>	Section 504 gives parents several options for resolving disagreements with the school: <ul style="list-style-type: none"> <li>• Mediation</li> <li>• Alternative dispute resolution</li> <li>• Impartial hearing</li> <li>• Complaint to the Office of Civil Rights (OCR)</li> </ul>



	<b>IEP</b>	<b>Section 504</b>
	<ul style="list-style-type: none"> <li>• IEP Facilitation</li> </ul>	<ul style="list-style-type: none"> <li>• Lawsuit</li> </ul>
<b>Funding/ Costs</b>	Students receive these services at no charge.	Students receive these services at no charge.
	States receive additional federal funding for eligible students.	States do not receive extra funding for eligible students. But the Federal government can take funding away from programs (including schools) that do not comply.
		IDEA funds cannot be used to serve students with 504 plans.

**Educational Setting**

**ACADEMIC SETTINGS 34 C.F.R. §104.34(A)**

Mississippi LEAs shall educate, or shall provide for the education of, each qualified student with a disability in its jurisdiction with their non-disabled peers to the maximum extent appropriate. Students with disabilities shall be placed in the general educational environment unless it is demonstrated by the LEA that the education of the student in the general environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever an LEA places a student with disabilities in a setting other than the general educational environment, it shall take into account the proximity of the alternate setting to the student's home.

**NON-ACADEMIC SETTINGS 34 C.F.R. §104.34(B)**

In providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 34 C.F.R. §104.37(a)(2), the LEA shall ensure that students with disabilities participate with non-disabled peers in such activities and services to the maximum extent appropriate.

**COMPARABLE FACILITIES 34 C.F.R. §104.34(C)**

If an LEA operates a facility that is identifiable as being for students with disabilities, the LEA shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the LEA.

**Evaluation and Placement**

**PREPLACEMENT EVALUATION 34 C.F.R. §104.35(A)**

An LEA that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with Evaluation Procedures 34 C.F.R. §104.35(b) of any student who, because of a disability, needs or is believed to need, special education or related services before taking any action with respect to the initial placement of the student in general or special education and any subsequent significant change in placement.



## **EVALUATION PROCEDURES 34 C.F.R. §104.35(B)**

Under Section 504, LEAs must conduct an evaluation in a timely manner of any student who needs or is believed to need special education or related services because of a disability. When a school is aware of a student's disability or has reason to suspect a student has a disability, and the student needs or is believed to need special education or related services, it would be a violation of Section 504 if the school delays or denies the evaluation.

In some circumstances, the IDEA evaluation process may provide the LEA with the necessary information, required by Section 504, to determine whether a student has a disability, and whether that student needs related aids and services or supplementary aids and services in the general education environment because of that disability. However, if an LEA uses a separate process for evaluating the needs of students under Section 504, it must follow the requirements for evaluation specified in the Section 504 regulations.

An LEA must evaluate a student if it has reason to believe the student has a disability and the student needs special education or related services as a result of that disability, even if the student only exhibits behavioral (and not academic) challenges.

For example, those students who have a high number of discipline referrals for inappropriate verbal outbursts in class, as compared to their peers, could be students with disabilities in need of services. Some students, due to an unaddressed disability, may engage in behaviors that do not comply with school codes of conduct because the students are not receiving needed special education or related aids and services, including needed services to address behavior. These and other indications that a student's behavior is out of the expected range of behaviors for students of similar age may trigger an LEA's obligation to evaluate under Section 504 to determine whether the student has a disability and in need of supports.

An LEA must, at no cost to parents, evaluate students suspected of having a disability, or more than one, in all related or specific educational need areas. For example, a student who is easily distracted and unfocused may be manifesting attention-deficit/hyperactivity disorder (ADHD), depression, or a specific learning disability. There is a range of physical or mental impairments that could cause a student to have a disability under Section 504 and in need of supports, but this determination cannot be made without first evaluating the student.

If an LEA determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation in order to determine whether a child has a disability under Section 504 and needs special education or related services because of a disability, the LEA must ensure that the student receives this assessment at no cost to the student's parents. When determining if the student has a disability and in need of supports, LEAs are also required to have procedures to ensure that evaluation information is documented and carefully considered.

In OCR's investigative experience, LEAs sometimes rely on a student's average, or better-than-average, classroom grades or grade point average (GPA) and, as a result, make inappropriate decisions. For example, an LEA might wrongly assume that a student with an above-average GPA does not have a disability and therefore fail to conduct a Section 504 evaluation of that student, even if the school suspects that the student has ADHD or the school is aware that the student has been diagnosed with ADHD outside of school.

However, a student with a disability may achieve a high level of academic success but may nevertheless be substantially limited in a major life activity due to the student's impairment. The committee must consider the additional time or effort the student must spend to read, write, or learn compared to others.

LEAs must have standards and procedures to evaluate students who may have a disability and in need of supports. The evaluation of a student, however, must be individualized. Although Section 504 does not require a specific process, the standards and procedures must meet certain requirements. Specifically, the evaluation standards and procedures must ensure that:

- Evaluations consist of more than IQ tests;
- Evaluations measure specific areas of educational need. These could include speech processing, inability to concentrate, and behavioral concerns;
- Tests are selected and administered to the student in a manner that best ensures that the test results accurately reflect the student's aptitude or achievement, or other factor being measured, rather than reflect the student's disability, except where those are the factors being measured;
- Tests and other evaluation materials are validated for the specific purpose for which they are used; and
- Tests are administered by qualified individuals

A parent has the right to request an evaluation if they suspect their child has a disability and/or is in need of additional supports. Requests may be made to any school district personnel including a school principal, counselor, social worker, or teacher. Through the Section 504 evaluation process, a knowledgeable group of people will determine if the student has a disability and, if so, what services the student needs.

Although a parent does not have an absolute right to a Section 504 evaluation upon request, a school must meet to determine if there is a suspected disability.

LEAs violate Section 504 when they deny or delay conducting an evaluation of a student when it would have been reasonable for a staff member to have suspected that a student has a disability and needs special education or related services because of that disability.

If the school does not agree to evaluate the student, the school must inform the parent of his or her right to challenge the school's decision. If a parent disagrees with any decisions regarding the identification, evaluation, or educational placement of his or her child, the parent may seek an impartial hearing (often called a due process hearing) that

provides the parent with an opportunity to participate and permits representation by an attorney and a review procedure. See Procedural Safeguards 34 C.F.R. §104.36 for detailed information regarding the procedural safeguards and due process procedures.

A parent may have a specialist or other educational professional, who is independent of the school, test his or her child. LEAs are required to consider information from a variety of sources when interpreting evaluation data and in making placement decisions. Outside and independent evaluations are valuable sources to consider when evaluating the preponderance of evidence. Parents are not entitled to an independent evaluation at the expense of the school district.

Often LEAs must address health issues of students during school hours or during extracurricular activities conducted after school hours. For example, students with food allergies may need an injection of epinephrine in an emergency, or students with diabetes may need help with carbohydrate counting and administering insulin injections. These measures (for example, self-management techniques or medication) are often referred to as mitigating measures. The effect of epinephrine, insulin, or other mitigating measures cannot be considered when the LEA assesses whether a student has a disability. (For additional information, see Mitigating Measures.)

In other words, when an LEA conducts an evaluation for disability, it is important to consider that mitigating measures can treat the impairment, thereby obscuring the substantial limitations of the impairment. Therefore, it is useful to have evidence showing that an impairment would be substantially limiting in the absence of the beneficial effects of mitigating measures. Such evidence could include information about the limitations a student experienced prior to taking medication, or evidence concerning the expected course of a particular disorder absent mitigating measures (such as a student with a peanut allergy could stop breathing after contact with peanuts.) This is why it is also beneficial to involve parents in the evaluation process, to access such information that parents may have.

It is important to note that a student is not required to stop taking needed medication or using another mitigating measure in order to receive an evaluation.

Therefore, when determining whether a student with a health concern has a disability, the LEA must evaluate whether the health concern (for example, a tree nut allergy or diabetes) would be substantially limiting without considering the beneficial effects of medication or other measures. For many children with a peanut allergy, for example, the allergy, when active, is likely to substantially limit the major life activities of breathing and respiratory function, and therefore, the child would have a disability. If, because of an allergy or other health concern, the student has a disability and may reasonably be believed to need special education or related aids or services, the student has a right to an evaluation under Section 504.

In determining a student's needs, sources to consider include aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

Other information that the LEA must also consider is a medical diagnosis or the results of a medical assessment obtained by the LEA. If 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 at no cost to the parent.

OCR interprets Section 504 to require informed parental consent for the evaluations. If a parent refuses consent for an initial evaluation and the LEA suspects a student has a disability, OCR interprets Section 504 to allow LEAs to use due process hearing procedures to seek to override the parents' denial of consent. OCR also urges schools to allow for parental participation when considering any change in the student's Section 504 provision of FAPE, including location of services.

**A student is disabled under the Section 504 regulations if the student meets any one of the three prongs listed in 34 C.F.R. §104.3(j)(1).**

### **PRONG 1: ELIGIBILITY PROTECTION**

**Any student who has a physical or mental impairment.**

Section 504 defines a physical or mental impairment as:

- 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; genitourinary; hemic and lymphatic; skin; and endocrine
- Any mental or psychological disorder

The definition does not include all specific diseases and conditions that may be physical or mental impairments because of the difficulty of ensuring the completeness of such a list.

### **PRONG 2: ELIGIBILITY PROTECTION**

**Any student who has a record of such impairment.**

Any student who has a record of such an impairment means “has a history of,” or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

### **PRONG 3: ELIGIBILITY PROTECTION**

**Any student who is regarded as having such an impairment.**

Any student who is regarded as having an impairment means the student (a) has a physical or mental impairment that does not substantially limit major life activities, but that is treated by an LEA as constituting such a limitation; (b) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or (c) has none of the impairments defined in this section but is treated by an LEA as having such an impairment.

It is important to note the second and third prongs of Section 504 (*has a record of or is regarded as having an impairment*) do not guarantee accommodations to the individual. These prongs simply provide the student with protection from discrimination.

Further, the ADA Amendments Act of 2008 clarified that an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability and an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

In determining substantial limitations, three questions to consider in determining whether a student's impairment substantially limits one or more major life activities are:

1. What is the nature and severity of the impairment?
2. How long will it last or is it expected to last?
3. What is its permanent or long-term impact or expected impact?

The ADA provides some assistance in interpreting the phrase "substantially limits." The impairment or disability must be substantial and somewhat unique, rather than commonplace, when compared to the average student in the general population. Thus, it is suggested that the term "substantially limits" be interpreted to mean that the student is unable to perform a major life activity that the average student of approximately the same age can perform, or that the student is significantly restricted as to the condition, manner, or duration under which a particular major life activity is performed as compared to the average student of approximately the same age.

### **MITIGATING MEASURES**

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the beneficial effects of mitigating measures such as:

1. Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
2. Use of assistive technology;
3. Reasonable accommodations or auxiliary aids or services; or
4. Learned behavioral or adaptive neurological modifications.
  - a. The beneficial effects of the modifying measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
  - b. As used in this sub-bullet:
    - i. the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
    - ii. the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.

Examples of impairments that may entitle an individual to 504 protections include:

- Diseases such as AIDS, tuberculosis, or hepatitis B;
- Medical conditions such as chronic asthma, diabetes, heart disease, juvenile arthritis, or seizure disorder; physical disabilities such as cerebral palsy or muscular dystrophy;
- Attention deficit disorder, with or without hyperactivity;
- Alcohol/drug addicted students (does not protect individuals who are currently using drugs or alcohol);
- Students with temporary disabilities; and
- Students with pregnancy-related complications.

It is important to note that the presence of one of these conditions does not qualify an individual for 504 protections. The impairment must also cause a substantial limitation of a major life activity.

Sources to consider include:

- ✓ Aptitude and achievement tests
- ✓ Teacher recommendations
- ✓ Physical condition
- ✓ Social or cultural background
- ✓ Adaptive behavior
- ✓ Medical diagnosis
- ✓ Results of a medical assessment

### **Discrimination Defined**

Below is a discussion of what it means to be a student or individual with a disability, and of related terms that help to comprehensively define disability as it is used in Section 504 and its implementing regulations.

Under Section 504, an individual with a disability (also referred to as a student with a disability in the elementary and secondary education context) is defined as a student who:

1. has a physical or mental impairment that substantially limits a major life activity;
2. has a record of such an impairment; or
3. is regarded as having such an impairment.

“No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance” (34 C.F.R. §104.4(a)).

Discrimination under Section 504 (34 CFR §104.4(b)) occurs when an institution engages in any of the following practices:

1. Denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services afforded to students without disabilities.

Examples:



- Denying credit to a student whose excused absenteeism is related to his/her disabling condition.
- Expelling a student and denying access to services for behavior caused by his/her disability.
- Refusing to dispense medication to a student who could not attend school otherwise.

2. Providing the qualified person with a disability an opportunity to participate in or benefit from the aids, benefits, or services that are not equal to those afforded others.

Example:

- Allowing a student with a physical disability to be enrolled only in science courses without science laboratory activities because the laboratory stations are not accessible.

3. Providing aids, benefits, or services to a qualified person with disabilities that are not as effective as those provided to persons without disabilities. (To be equally effective, an aid, benefit, or service need not be identical or produce equal results; it merely must afford equal access to achieve equal results.)

Example:

- Continuing to provide the same level of amplification to a student with a hearing impairment in a lecture hall as that provided for all students, despite the student having an accommodation plan requiring additional amplification.

4. Providing different or separate aids, benefits, or services to a qualified person with a disability unless such an action is necessary to provide aids, benefits, or services that are equally effective as those provided others.

Examples:

- Requiring all students wearing leg braces to participate in modified physical education, regardless of mobility.
- Requiring all students with hearing impairments to register for the same classes if they need an interpreter.

5. Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of a disability.”

Examples:

- Honoring a request to place only students without disabilities as work-study students with specific employers.
- Awarding a grant to a business that discriminates against persons with disabilities.

6. Denying qualified persons with disabilities the opportunity to participate as a member of a planning or advisory board because of their disabilities.

Examples:

- Excluding a student with seizure disorders from participating on the student council.
- Excluding a deaf parent from participation on a school advisory committee due to his/her disability.



7. Otherwise limiting a qualified person with a disability from the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

Example:

- Prohibiting a student with a disability from participating in a field trip.

8. Selecting the site or location of a facility that excludes persons with disabilities, denies them benefits, or otherwise subjects them to discrimination.

Example:

- Choosing a site for a magnet program that would not be accessible to students with physical impairments.

9. Despite the existence of separate or different programs or activities, denying a qualified person with a disability the opportunity to participate in a program or activity that is not separate or different. It must be noted that providing unnecessarily separate or different services is discriminatory.

Example:

- Requiring a student who is blind but otherwise qualified to participate in the performance choir to participate in a nonperformance choir due solely to the need for assistance to navigate the performance stage.

## Procedural Safeguards

### **Procedural Safeguards 34 C.F.R. § 104.36**

An LEA that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions, regarding the identification, evaluation, or educational placement of students, who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Under Section 504, school districts are required to develop and implement a system of procedural safeguards to address FAPE concerns specifically, such as the identification, evaluation, and educational placement of students with disabilities.

Procedural safeguards include notice; an opportunity for records review by parents or guardians; an impartial due process hearing, with an opportunity for participation by the student's parents or guardian and representation by counsel; and a review procedure.

Examples of relevant records could include evaluation reports, report cards, a Section 504 plan, discipline records, and health records. Schools can provide parents or guardians with access to relevant records by, for example, providing copies of the records or allowing parents to review the records at the school and make copies.

## Non-Academic Services

### **Non-Academic Services 34 C.F.R. § 104.37**

An LEA shall provide non-academic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.

Non-academic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA's referrals to agencies that provide assistance to students with disabilities, and employment of students, including both employment by the LEA and assistance in making available outside employment.

### **Counseling Services**

An LEA that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of disability. The LEA shall ensure that qualified students with disabilities are not counseled toward more restrictive career objectives than are nondisabled students with similar interests and abilities.

### **Physical Education & Athletics**

In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, an LEA to which this subpart applies may not discriminate based on disability. An LEA that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide qualified students with disabilities an equal opportunity for participation.

An LEA may offer to students with disabilities physical education and athletic activities that are separate or different from those offered to non-disabled students only if separation or differentiation is consistent with the requirements of **Educational Setting 34 C.F.R. § 104.34** and only if no qualified disabled student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

## Procedures for Writing Section 504 Plans

### A. Evaluation Conducted

What is required for the Section 504 evaluation and placement process is determined by the type of disability believed to be present, and the type of services the student may need. The committee, composed of people knowledgeable about the student, should consider all available information, including educational, medical, and psychological records as appropriate. In some instances, further evaluation may be necessary.

### B. Eligibility Determined

Section 504 regulations should be reviewed to document the presence of a qualifying disability, the effect on a major life activity, and the impact on the student's education. All three areas must be documented. If it is determined that no disability exists, the committee should document this and go no further.

**C. Necessary Accommodations Identified**

The committee determines what accommodations and/or services must be provided in order that the student may receive a free appropriate public education (FAPE).

**D. Learning Environment Identified**

The committee determines the learning environment in which the student may be taught with the outlined accommodations.

**E. Parental Rights Given**

The student's parent/guardian is given a copy of the Section 504 rights form. The rights are reviewed with the parent/guardian. When formulating a 504 plan, the committee should include the student's teachers, the parent/guardian, an administrator, and other individuals as appropriate. The 504 plan should be kept as part of the student's cumulative record and reviewed as needed. The file should be forwarded if the student transfers to another school within the district. The 504 plan may be forwarded to other districts upon request of the student's cumulative record.

**SECTION 504 TEAM AND PLAN**

Once a student is identified as potentially being eligible for services under Section 504, a multidisciplinary team is required to gather information about the student. The team should include people knowledgeable about the student, the meaning of the evaluation data, and the placement/accommodation options. The team members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability.

The 504 team must include persons knowledgeable about:

- the student
- the meaning of the evaluation data
- available supports

**504 Plan**

A written Section 504 plan is a way to document that the LEA engaged in a process to identify and address the needs of a student with a disability and to communicate to school personnel the information needed for successful implementation. The Office for Civil Rights (OCR) encourages schools to document a student's Section 504 services in a written plan to help avoid misunderstandings or confusion about what Section 504 services the school offered the student. The provision of FAPE is ensured through a 504 plan. LEAs shall provide qualified students under Section 504 with appropriate services designed to meet their individual needs to the same extent as the needs of students without a mental or physical impairment. The 504 plan must also be designed to ensure access to non-academic and extracurricular services and activities in a manner that affords qualified students an equal opportunity to participate in such services and

activities to the maximum extent appropriate. Such services may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEAs. All accommodations and related services in the 504 plan shall be provided by the LEAs. Section 504 service plans should be reviewed and updated at least annually to reflect the student's needs.

## Frequently Asked Questions

1. **Who is protected by Section 504?** Any otherwise qualified student who currently has an impairment which substantially limits one or more major life activities is eligible for protection and services under Section 504. Any student who is regarded as having an impairment or who has a record of an impairment is eligible for protection from discrimination.
2. **What is a major life activity?** Section 504 defines major life activities as those activities involving caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
3. **What are “substantial limitations”?** This term is not defined in the act or the regulations and is left to each agency to define. However, the Americans with Disabilities Act suggested that the term “substantially limits” be interpreted to mean that the student “is unable to perform, or that the student is significantly restricted as to the condition, manner or duration under which a particular major life activity is performed as compared to the average student of approximately the same age.” This interpretation can provide some guidance in defining the phrase.
4. **What is “reasonable accommodation”?** Reasonable accommodation in the school setting is a modification or adjustment of educational programs to afford students with disabilities equal opportunity to access the programs. Reasonable accommodation must be made for students with disabilities unless the school can show that the requested accommodations would impose undue hardship.
5. **What protections are afforded to those with a “record of an impairment” or who are “regarded as having an impairment”?** Under these prongs of the act, individuals are only eligible for protection from discrimination. For example, a student who has a record of leukemia but who is currently in remission cannot be denied the opportunity to try out for the football team. Likewise, a student with an orthopedic impairment cannot automatically be regarded as disabled when in reality the student experiences only minimal limitations.
6. **Are IDEA (special education) students protected by Section 504?** Students who are served through special education under IDEA are also covered under Section 504. However, individuals covered by Section 504 are often not covered by IDEA. The determining factor will be the severity of the disability and the need for special education and related services.
7. Do students who have an Individualized Education Program under IDEA need a 504 Plan as well? No. The IEP should cover all aspects of a student’s educational program.

8. **When a student is dismissed from special education, is he/she automatically eligible for 504?** Yes and no. The student cannot be discriminated against based on the history of an impairment. If the 504 Committee determines that the student continues to have a disability that substantially limits a major life activity even though he does not meet IDEA eligibility requirements, the student would then be eligible for services and protection under Prong 1 of Section 504.
9. **Can a temporary disability qualify a child for accommodations under Section 504?** In some instances, students with temporary disabilities are eligible for 504 protection. The committee should consider the nature and severity of the impairment and what its permanent or long-term impact will be.
10. **What protections are afforded to alcohol and/or drug-addicted students?** Section 504 does not provide protection to students currently engaging in alcohol/drug use or to casual users. It does protect individuals who have successfully completed rehabilitation programs, students who are participating in a rehabilitation program, or students regarded erroneously as drug users.
11. **Who is responsible for implementing Section 504?** Section 504 is considered to be a provision of general education. It is therefore the responsibility of classroom teachers and the principal to ensure that Section 504 accommodations are carried out.
12. **Who makes up the 504 committee?** The committee must be comprised of members knowledgeable about the student, interpretation of evaluation data, and/or available supports. Committee members can include, but are not limited to, parents, an administrator, teacher(s), counselor, extra-curricular faculty, interventionist, outside agency representative, etc...
13. **Is evaluation necessary to determine 504 eligibility?** Some type of evaluation is necessary. However, the evaluation may involve reviewing information such as medical information, standardized test scores, and classroom data available to the committee rather than a new formal evaluation.
14. **Is a medical report always necessary to determine 504 eligibility?** No. Although the 504 Committee should attempt to get as much information as possible regarding the student's condition, a physician's statement is not required to determine eligibility. If the committee determines that a formal evaluation of any type is necessary to determine eligibility, it must be provided at no cost to the parents.
15. **Must students have a written 504 plan in order to receive protection or accommodations?** No. Eligible students are protected by Section 504 even if a formal plan is not in place. In many cases, an effective TST plan will provide for needed accommodations.
16. **Can a teacher refuse to implement accommodations that are written into a student's 504 plan?** After the 504 Committee has determined the accommodations necessary for a student, teachers must implement them. Failure to do so places the LEA in violation of Section 504.

17. **Does every child who takes medication at school need a 504 plan?** No. Students may have accommodations such as the administration of medication without having a formal plan. Local school system policy should be implemented.
18. **If a student has a 504 plan, will a teacher or paraprofessional be assigned to come and work with that student?** In most circumstances, no additional personnel will be assigned to carry out accommodations. Section 504 accommodations are generally carried out by the classroom teacher or other designated personnel within the school. However, a student unable to attend school may qualify for Hospital Homebound services and receive instruction from a visiting teacher.
19. **Are there any special rules for PE?** The 504 Committee should determine to what extent a student can participate in PE. Alternate assignments or exemptions should be addressed in the 504 plan.
20. **Is it possible for a 504 student to fail a class?** Yes. 504 protection does not automatically dictate that a student will receive passing grades. The 504 Committee must determine if the accommodations were appropriate and if they were implemented for the student. Team members must keep in mind that many factors influence a student's academic performance.
21. **How does eligibility for Section 504 affect discipline?** Students may not be punished for behavior that is caused by a disability. If it is determined that the behavior was not related to the disability, the student could receive the same consequences as a student without a disability.
22. **Can the 504 Committee determine accommodations for the ACT/SAT?** The 504 Committee can make recommendations based on accommodations written in the 504 plan. However, the Educational Testing Service makes all decisions regarding accommodations on an individual basis.
23. **Can the 504 Committee determine accommodations to district-wide standardized testing and the statewide testing program?** Any needed accommodations must be outlined in a student's 504 plan. For allowable accommodations on the statewide testing program, see the state's allowable accommodations manual.
24. **Can a student be dismissed from 504?** Yes. Students who no longer have an impairment are no longer eligible for 504 services. They will continue to be eligible for protection from discrimination based on their history of impairment.
25. **Does 504 eligibility automatically guarantee that a student is chosen for extracurricular teams/activities?** No. Students with disabilities must be given equal access to compete for and participate in these activities with reasonable accommodations. If the student fails to meet the criteria for team membership, then he/she is not considered to be "otherwise qualified." Discrimination occurs when the decision not to allow the student to participate is based solely on the fact that the student has a disability.
26. **If the 504 committee suspects a student no longer needs a 504 plan, does the team review at the annual meeting or should a reevaluation take place to determine? If the 504 team suspects a student may no longer need a 504 plan, it is best practice for the 504 committee to convene and conduct a reevaluation.**





## Commonly Used Terms

### Acronyms

AAC - Alternative Augmentative Communication  
ABA - Applied Behavior Analysis  
ABC - Antecedent, Behavior, Consequence  
ADA - Americans with Disabilities Act  
ADD/ADHD - Attention Deficit/Attention-Deficit Hyperactivity Disorder  
AIM - Accessible Instructional Materials  
APE - Adaptive Physical Education  
ASD - Autism Spectrum Disorders  
ASL - American Sign Language  
AT - Assistive Technology  
BD - Behavioral Disorder  
BIP - Behavior Intervention Plan  
CAPD - Central Auditory Processing Disorder  
CBA - Curriculum Based Assessment  
CC - Closed Captioning  
CF - Cystic Fibrosis  
CFR - Code of Federal Regulations  
CP - Cerebral Palsy  
DB - Deaf-Blind  
DD - Developmental Delay  
DIBELS - Dynamic Indicators of Basic Early Literacy  
DS - Down Syndrome  
DSM - Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association  
EmD - Emotional Disturbance  
ELL - English Language Learner  
ESD - Extended School Day  
ESL - English as a Second Language  
ESSA - Every Student Succeeds Act  
ESY - Extended School Year  
FAPE - Free Appropriate Public Education  
FAS - Fetal Alcohol Syndrome  
FBA - Functional Behavioral Assessment  
FC - Facilitated Communication  
FERPA - Family Educational Rights and Privacy Act  
HI - Hearing Impaired  
HH - Hard of Hearing  
IAES - Interim Alternative Educational Setting  
ID - Intellectual Disability  
IDEA - Individuals with Disabilities Education Act  
IEP - Individualized Education Program  
IFSP - Individualized Family Service Plan  
IHE - Institution of Higher Education  
LEA - Local Education Agency

MD - Multiple Disabilities  
MDR - Manifestation Determination Review  
MTSS - Multi-Tier System of Supports  
OCD - Obsessive-Compulsive Disorder  
OCR - Office of Civil Rights  
ODD - Oppositional Defiant Disorder  
OHI - Other Health Impaired  
OI - Orthopedic Impairment  
O & M - Orientation and Mobility Services  
OSEP - Office of Special Education Programs at the U.S. Department of Education  
OT - Occupational Therapy  
PBS - Positive Behavioral Supports  
PD - Physical Disability  
PDD - Pervasive Developmental Disorder  
PII - Personally Identifiable Information  
PLAAFP - Present Levels of Academic Achievement and Functional Performance  
PS - Preschool  
PT - Physical Therapy  
RS - Related Services  
SAS - Supplementary Aids and Services  
SB - Spina Bifida  
SEA - State Education Agency  
SI - Sensory Integration  
SLD - Specific Learning Disability  
SLI - Speech-Language Impairment  
SLP - Speech-Language Pathologist  
SPED - Special Education  
TBI - Traumatic Brain Injury  
TS - Tourette Syndrome  
TST - Teacher Support Team  
VI - Visual Impairment  
Voc. Ed - Vocational Education  
VR - Vocational Rehabilitation

## Glossary

**Accommodations** - Changes in the provision of instruction or administration of an assessment in terms of how the student takes or responds to the assessment. Broad categories of accommodations include presentation, response, setting, and scheduling.

**Adaptive Physical Education (APE)** - A diversified program of developmental activities, games, sports, and rhythms suited to the interests, capabilities and needs of students with disabilities who may not successfully engage in a regular physical education program.

**Alternative Dispute Resolution (ADR)** - Alternative opportunities for parties to resolve disputes collaboratively and avoid litigation, typically through negotiation, mediation, or arbitration.

**Assessment** - Any systematic method of obtaining information from tests and other sources; used to draw inferences about characteristics of people, objects, or programs. An initial evaluation (or periodic reevaluation) to determine whether a child is a child with a disability and to determine the educational needs of this child.

**Assistive Technology (AT) Device** - Any piece of equipment used to increase, maintain, or improve functional capabilities of individuals with disabilities.

**Assistive Technology (AT) Service** - Any service that directly assists an eligible individual in selecting, acquiring, or using an assistive technology device.

**Child Find**- A legal requirement for public schools to identify, locate, and evaluate children who need special education and related services. It covers children from birth to age 21, regardless of the severity of their disabilities. It applies to all children, including those who are homeschooled, in private schools, migrants, or without homes.

**Curriculum-Based Assessment** - A methodology in special education in which a child's progress in the curriculum is measured at frequent intervals.

**Due Process** - In general, a course of legal proceedings according to rules and principles established for enforcement and protection of private rights. Essential components of due process are "notice" and "a meaningful opportunity to be heard."

**Due Process Hearing** - The formal, legal procedure guaranteed by Federal law to resolve disputes relating to the education of IDEA-eligible children with disabilities to ensure that each receives a free appropriate public education (FAPE) tailored to his/her unique needs.

**Extended School Year (ESY)** - A provision for a special education student to receive instruction during ordinary school vacation periods.

**Family Educational Rights and Privacy Act (FERPA)** - A Federal law that regulates the management of student records and disclosure of information from those records, with its own administrative enforcement mechanism.

**Functional Behavioral Assessment (FBA)** - An evaluation process to understand the purpose, motivation, and correlates of challenging behavior(s) in order to develop a positive and appropriate Behavior Intervention Plan (BIP), instructional supports and services.

**Inclusion (or) Inclusive Education** - A belief that every student is entitled to an instructional program that meets his or her individual needs and learning characteristics; a commitment to build and maintain an assured sense of belonging for all students, regardless of strengths or challenges.

**Independent Educational Evaluation (IEE)** - An independent evaluation of a student from a qualified student. Parents have the right to ask for and obtain an IEE if they disagree with the results of an assessment conducted by the LEA. Any IEE must be considered at the IEP meeting. For Section 504 support, parents do not have a right to an IEE under Section 504 of the Rehabilitation Act of 1973.

**Individuals with Disabilities Education Act (IDEA)** - Federal law that entitles students with disabilities to special education services.

**Individualized Education Program (IEP)** - The annually written record of an eligible individual's special education and related services, describing the student's unique educational needs and how they will be met.

**Individualized Family Service Plan (IFSP)** - A written plan for providing early intervention services to an eligible child with a disability (from birth to third birthday) and to the child's family.

**Least Restrictive Environment (LRE)** - A Federal mandate stipulating that, to the maximum extent possible, student with disabilities be educated with their non-disabled peers.

**Local Education Agency (LEA)** - Public school districts, including State Charter Schools.

**Mediation** - A voluntary alternative dispute resolution (ADR) process that may be requested PRIOR to filing a Due Process Complaint. Mediation is not a prerequisite to filing.

**Mediation (Formal Due Process)** - A voluntary alternative dispute resolution (ADR) process that may occur AFTER a Due Process Complaint is filed.

**Modifications (Reasonable modifications)** - practices that change, lower, or reduce learning expectations.

**Office for Civil Rights (OCR)** - An agency of the Federal government's executive branch within the Department of Education charged with enforcing several civil rights statutes, including Section 504 of the Rehabilitation Act of 1973.

**Office of Special Education Programs (OSEP)** - An office with OSERS charged with ensuring that the various states comply with IDEA.

**Office of Special Education and Rehabilitation Services (OSERS)** - An agency of the Federal government's executive branch with the Department of Education (DOE).

**Placement** - The unique combination of facilities, personnel, location or equipment necessary to provide instructional services to meet the goals as specified in the student's IEP or Section 504 plan.

**Prior Written Notice (PWN)** - A notice supplied to the other party that includes a description of any IEP actions proposed or refused by the LEA or by the parent. Does not apply to Section 504 plans.

**Procedural Safeguards** - Educational rights of students with disabilities, from ages three to 21.

**Related Services** - Services required to assist an individual with disabilities to benefit from special education, including, but not limited to, transportation, occupational therapy, physical therapy, speech and language therapy, mental health services, and medical care.

**Resolution Meeting** - A meeting mandated in IDEA 2004 as part of the Due Process Complaint process where parties attempt to resolve a dispute prior to proceeding to a Due Process Hearing. A resolution meeting is not required for Section 504 complaints.

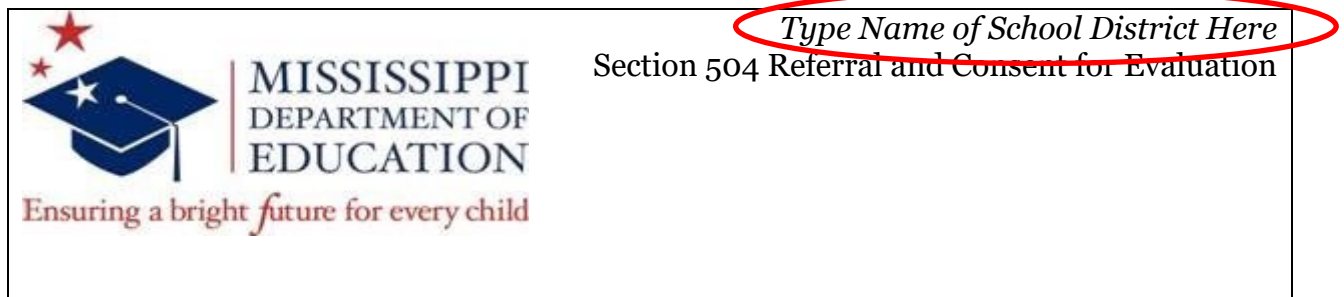
**Section 504 Plan** - A plan developed to meet the requirements of a Federal law that prohibits discrimination against students with disabilities, named for Section 504 of the Rehabilitation Act of 1973.

**Stay Put** - A ruling that permits a student to remain in their current placement during the resolution of disputes as invoked by to state procedures. This is not explicitly stated in Section 504 of the 1973 Rehabilitation Act; however, OCR has provided guidance for best practice.

## Model Forms - *Not Required for LEA Use*

The following pages are various model forms created by the Mississippi Department of Education for LEA use, should they choose to do so. All the forms are also included in a 504 Model Form Packet, available on the MDE, OSE website.

Although use of model forms is not required, if an LEA does choose to use the forms, the LEA is only allowed to modify the document headers to reflect the name of the LEA. (see example below) All other document elements and information on every model form must remain intact to preserve the fidelity and consistency of resources shared with Mississippi LEAs.



### LIST OF MODEL FORMS

1. Section 504 Parental Consent for Evaluation
2. Section 504 Referral Packet
3. Section 504 Manifestation Determination Review
4. Section 504 Eligibility Determination
5. Section 504 Supports and Accommodations Plan

### Attachments:

1. Section 504 Parent Procedural Safeguards

SECTION 504 PARENT CONSENT FOR EVALUATION

Type Name of School District Here  
Section 504 Consent for Evaluation

\_\_\_\_\_  
Date

Dear Parent of \_\_\_\_\_  
Child's Name

Your child was referred and recommended for an evaluation. The referral indicates that your child may be eligible for supports and/or services under **Section 504 of the 1973 Rehabilitation Act**. We would like to begin the process of determining if your child qualifies for Section 504 protections.

The next step in determining eligibility is an evaluation that may include (but is not limited to) a review and/or administration of the following:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Grades Assessment         | <input type="checkbox"/> Discipline Records | <input type="checkbox"/> Behavioral    |
| <input type="checkbox"/> Parent Reports Assessment | <input type="checkbox"/> Medical Tests      | <input type="checkbox"/> Psychological |
| <input type="checkbox"/> Teacher Reports           | <input type="checkbox"/> Achievement Tests  | <input type="checkbox"/> Other: _____  |
| <input type="checkbox"/> Academic Records          | <input type="checkbox"/> Work Samples       |  |

Please indicate your decision to have your child evaluated for the purposes of determining eligibility for Section 504 services below.

- Yes**, I agree for my child \_\_\_\_\_ to be evaluated.
- No**, I do not agree for the following reasons:



## SECTION 504 REFERRAL PACKET

Type Name of School District Here  
Section 504 Referral Packet

### Section 1 - Student Information

_____ Student Name	_____ MSIS ID	_____ DOB
_____ School	_____ Grade	_____ Meeting Date
_____ Parent/Guardian	_____ Name of Referring Source	

*Note:* Complete sections 2-5 for all students. Only complete section 7 if behavior is an area of concern.

### Section 2- Area(s) of Concern

**Only** select areas of concern that significantly impact the student's classroom performance.

- |   |  |
|---|--|
| <input type="checkbox"/> Physical limitations         | <input type="checkbox"/> Problem-solving skills          |
| <input type="checkbox"/> Attention span               | <input type="checkbox"/> Organizational skills           |
| <input type="checkbox"/> Attendance                   | <input type="checkbox"/> Self-control                    |
| <input type="checkbox"/> Memory skills                | <input type="checkbox"/> Easily confused                 |
| <input type="checkbox"/> Activity level               | <input type="checkbox"/> Gross motor skills/coordination |
| <input type="checkbox"/> Ability to follow directions | <input type="checkbox"/> Social/interpersonal skills     |
| <input type="checkbox"/> Comprehension                | <input type="checkbox"/> Fine motor skills               |
| <input type="checkbox"/> Listening skills             | <input type="checkbox"/> Passive/nonresponsive           |
| <input type="checkbox"/> Communication skills         | <input type="checkbox"/> Other: _____                    |

Academic progress (provide general description)

Medical/Health (areas of concern) *Note: Vision and/or hearing concerns should be screened and resolved prior to continuing the Section 504 process and documented here.*

Behavior (provide general description)

Emotional/Social (provide general description)

Other (areas of concern)

### **Section 3 - Additional Concerns**

Include other information that may be helpful to understand concerns.

### **Section 4 - Student's Strengths**

## Section 5 - Previous Supports Provided

- Differentiated Instruction: How instructional content has been presented to provide a different avenue for the student to acquire content and/or ideas.

- Student Supports: Changing the assignment or project to adjust to student skill, readiness, or learning preference.

- Physical Environment: Changes to the classroom arrangement and learning environment.

## Section 6: Attachments

- A. If the student is having academic difficulties, please attach a student work sample, benchmark assessments, and/or progress monitoring data reflecting specific concern(s).
- Work sample(s) attached
  - N/A
- B. If there is a medical concern, please attach relevant information or history.
- Information attached
  - N/A
- C. If there is a behavioral concern, please attach recent disciplinary action taken or other documentation. **In addition, please complete Section 7: Teacher Input for Addressing Behavior Problems.**
- Documentation attached
  - N/A

## Section 7 (A-F): Behavior Concerns (ONLY IF REFERRING STUDENT FOR BEHAVIOR CONCERNS)

- A. Describe the behavior(s) of concern. Use concrete and measurable terms. (e.g. Sam demonstrates aggressive behavior towards his peers at least three to four times daily. His aggression is characterized by such actions as pushing, inappropriate verbal language and grabbing materials from his peers.)

- B. Provide a description of when the behavior(s) occur:

- Day or days of the week

- Time or times of the day

During certain types of activities or tasks

'While in presence of certain people (individuals or groups)

While in specific environments

When fatigued, hungry, or sick

C. Identify what the student gains or avoids by demonstrating the behavior(s) of concern.

- |  |  |                                       |
|--|--|---------------------------------------|
| <input type="checkbox"/> Avoid tasks       | <input type="checkbox"/> Avoid embarrassment | <input type="checkbox"/> Gain Control |
| <input type="checkbox"/> Avoid attention   | <input type="checkbox"/> Gain attention      | <input type="checkbox"/> Nothing      |
| <input type="checkbox"/> Unknown/uncertain | <input type="checkbox"/> Other: _____        |                                       |

D. Provide a brief description of specific expectations for the student.

E. Provide a brief description of how the expectations have been communicated to the student.

F. Provide a brief description of the strategies and techniques that have been implemented to address the inappropriate behavior.

**Section 8 - Previous Activities/Interventions**

A. Previous interventions completed?

Yes Date: \_\_\_\_\_

No

B. Description of interventions completed (if applicable):

C. Previous data reviewed and analyzed?

Yes Date: \_\_\_\_\_

No



SECTION 504 Manifestation Determination Review

Type Name of School District Here  
Section 504 Manifestation Determination Review

**Student Information**

Student Name	MSIS ID	DOB
School	Grade	Meeting Date

**Evaluation Data Considered from a Variety of Sources:**

The Section 504 Committee reviewed and carefully considered the following data gathered from a variety of sources.

Please check all that applies and attach copies of the data.

	Grades		Student Input
	Parent Input		School History/Attendance
	Teacher Input		Discipline Records
	Administrator Input		Medical Evaluations/Diagnoses
	School Health Information		Mitigating Measures
	Previous Special Education Records		Language Acquisition
	State Testing Assessments		Other:
	Student Work Samples		

**Section 504 Manifestation Determination:**

1. Description of Misconduct (Note: The Section 504 Committee does not address whether or not the alleged behavior occurred):

2. Description of proposed disciplinary action:

3. Does the proposed disciplinary action constitute a change in placement?

- No- proceed with disciplinary action
- Yes- continue with manifestation determination review

4. Is the proposed disciplinary action based on the student's illegal use of drugs, or for the use of or possession of alcohol?

- Yes- the student is subject to the same disciplinary action imposed on nondisabled students who engage in the same behavior. The committee will not conduct a manifestation determination.
- No- continue with the manifestation determination review.

**Section 504 Review**

The Section 504 Committee should review the following student information before making a manifestation determination:

- Qualifying mental or physical impairment.
- Current list of accommodations and/or services, including FBA and BIP.
- Prior discipline referrals and suspensions.

**Determination**

Following the review of all relevant information, including but not limited to, information contained in the student's file, the student's accommodation plan and/or BIP, teacher observations and any information provided by the parents, the Section 504 Committee has made the following determinations:

**Question 1**

Was the conduct in question caused by, or directly and substantially related to the student's disability?

- Yes
- No

**Question 2**

Was the conduct in question the direct result of the school’s failure to implement the student’s Section 504 plan?

- Yes
- No

**Results:**

If either question is answered YES, the Committee will conduct a Functional Behavior Assessment (FBA), unless an FBA had been done prior to the behavior in question. The Committee will also implement a Behavioral Intervention Plan (BIP) for the student. If the student already has a BIP, the Committee will review and modify the BIP as necessary to address the behavior. The Committee will also return the student to the placement from which the student the student was removed unless:

- 1) The parent and school agree otherwise as part of the modification of the student’s Section 504 Plan, including BIP; or
- 2) The student’s misconduct involved weapons or the infliction of a serious bodily injury to another person.

If the section question is answered YES, the Committee will take immediate steps to remedy the deficiencies in the implementation of the Section 504 Plan

If both questions are answered NO, the student is subject to the same discipline procedures applicable to students without disabilities.

Notes:

SECTION 504 ELIGIBILITY DETERMINATION

Type Name of School District Here  
Section 504 Eligibility Determination

**Section 1 - Student Information**

_____	_____	_____
Student Name	MSIS ID	DOB
_____	_____	_____
School	Grade	Meeting Date

**Section 2- Section 504 Eligibility Team Members (signatures)**

_____	_____
Parent	Administrator
_____	_____
Student	Teacher
_____	_____
Teacher	School Psychologist/ Counselor
_____	_____
Teacher	Other

**Section 3 - Suspected/Reported Impairment Information**

- A. Under Section 504, a student with a disability is defined as a person who: (1) has a physical or mental impairment that substantially limits a major life activity; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Please list the suspected/reported physical or mental impairment(s) below:

_____	_____
Suspected/reported physical or mental impairment	Suspected/reported physical or mental impairment

- B. The impairment(s) above limits at least one of the following major life activities:
- Caring for oneself
  - Performing manual tasks
  - Walking
  - Seeing
  - Hearing
  - Speaking Breathing

- Learning
- Other: \_\_\_\_\_

C. The suspected/reported impairment(s) is/are:

- Episodic
- Temporary
- Permanent
- Intermittent or in remission

#### **Section 4 - Evaluation Information**

A. The following were reviewed/administered as part of the Section 504 eligibility process:

- Standardized test scores
- Psychological assessment
- Adaptive behavior assessment
- Medical diagnosis/assessment
- Academic records/grades
- Physical condition information
- Social or cultural background
- Discipline records
- Student work samples
- Cognitive assessment
- Teacher recommendations/observations
- Parent input
- Section 504 pre-referral data
- Other: \_\_\_\_\_

B. Provide a clear, concise description of results from assessments/data that were reviewed.

## Section 5 - Placement Decision

### A. Eligibility Determination

- 1) Based on the above information, does the student have a physical and/or mental impairment?  
 YES  
 NO
- 2) If yes, does the impairment substantially limit at least one major life activity?  
 YES  
 NO

IF THE ANSWER TO QUESTION (1) **OR** (2) IS “NO”, THEN THE STUDENT IS **NOT** ELIGIBLE FOR SECTION 504 SERVICES. THE ELIGIBILITY PROCESS IS HALTED. PARENT/GUARDIAN SIGNS BELOW.

I have received a copy of the Notice of Rights under Section 504.

---

Parent signature

IF THE ANSWERS TO QUESTIONS (1) **AND** (2) ARE “YES”, THEN THE STUDENT IS ELIGIBLE FOR SECTION 504 SERVICES. PROCEED WITH DEVELOPMENT OF A 504 SUPPORT AND ACCOMMODATIONS PLAN FOR THE STUDENT. PARENT/GUARDIAN SIGNS BELOW.

I have received the Notice of Rights of Students and Parents under Section 504 and I **give** my consent for my child to receive services through a Section 504 Plan.

---

Parent signature

I have received the Notice of Rights of Students and Parents under Section 504 and I **DO NOT** give my consent for my child to receive services through a Section 504 Plan.

---

Parent signature

SECTION 504 Supports and Accommodations Plan

Type Name of School District Here  
Section 504 PLAN

**Section 1- Student Information**

_____ Student Name	_____ MSIS ID	_____ DOB
_____ School	_____ Grade	_____ Meeting Date
_____ Parent/Guardian	_____ Section 504 Qualifying Disability	

**Section 2 - Services to be Provided** (ex: Nurse support, ADA access, etc.)

Service	Frequency	Person(s) Responsible

**Section 3 - School and Classroom Accommodations and Supports to be Provided** *(This list is not exhaustive)*

- Preferential seating
- Extended time on tests and assignments
- Reduced homework or classwork
- Verbal, visual or technology aids
- Modified textbooks or audio-video materials
- Adjusted class schedules or grading
- Audio/verbal testing
- Excused lateness, absence, or missed classwork
- Pre-approved nurse's office visits
- Memory aids (including graphic organizers)
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

Explanation for selected services, accommodations and supports

**Section 4 - State and Local Option Testing Program Accommodations and Supports** *(Accommodations should also be routinely used in the instructional program before implementation on state-wide and local option assessments)*

- Extended time
- Read aloud
- Separate room testing
- Multiple sessions
- Magnification device
- Dictation to scribe
- Braille/Braille writer
- Large print



- Crammer-abacus
- Marks in book
- Assistive devices
- Computer with processor
- Alternate assessments
- 1 item/page
- Interpreter/translator
- Other: \_\_\_\_\_

*\*State accommodations must be in alignment with allowable state testing accommodations.*

Meeting Notes and/or Additional Information:

## SECTION 504 PROCEDURAL SAFEGUARDS

Type Name of School District Here  
Section 504 Procedural Safeguards

### **Section 504 of The Rehabilitation Act Of 1973**

The Rehabilitation Act of 1973, commonly known in the schools as Section 504, is a Federal law passed by the United States Congress with the purpose of prohibiting discrimination against disabled persons who may participate in, or receive benefits from, programs receiving Federal financial assistance. In the public schools specifically, Section 504 applies to ensure that eligible, disabled students are provided with educational benefits and opportunities equal to those provided to non-disabled students.

A student with a disability is one who has a physical or mental impairment that substantially limits one or more of his/her major life activities/major bodily functions such as reading, concentration, thinking, learning, walking, seeing, hearing, breathing, working, and performing manual tasks, etc. Eligible students may be entitled to an accommodation plan that provides the student with the same opportunity to benefit from programs and services as afforded non-disabled students.

The purpose of the Notice is to inform parents and students of their rights at 34 C.F.R. §104.36 of the Section 504 regulations:

- The school district must provide you with written notice of your rights. If you need further explanation or clarification of any of the rights described in this notice, contact the District's Section 504 Coordinator, who will assist you. See contact information at the bottom of this notice.
- Under Section 504, your child has the right to an appropriate education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met [34 C.F.R. §104.33].
- To the maximum extent appropriate, your child has the right to be educated with children who are not disabled. Your child will be placed and educated in regular classes, unless the district demonstrates that their educational needs cannot be adequately met in the regular classroom, even with supplementary aids and services. [34 C.F.R. §104.34] Your child has the right to services, facilities, and activities comparable to those provided to non-disabled students. [34 C.F.R. §104.34]
- You have the right to be notified by the district prior to any action regarding the identification, evaluation, or placement of your child. [34 C.F.R. §104.36]
- You have the right to examine relevant documents and records regarding your child (generally documents relating to identification, evaluation, and placement of your child under Section 504). [34 C.F.R. §104.36]



- You have the right to a grievance hearing to contest any action taken by the district regarding your child’s identification, evaluation, and placement of your child under Section 504. [34 C.F.R. §104.36]
- You have the right to participate personally in the hearing and to be represented by an attorney at your expense. You also have a right to file a complaint with the Office of Civil Rights (OCR) or to file an action in Federal district court.
- If you wish to contest an action taken by the Section 504 Team by means of an impartial due-process hearing, you must submit a Request for Hearing to the District's Section 504 Coordinator at the address below:

NAME OF DISTRICT CONTACT

TITLE

MAILING ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

EMAIL

