

Section 504 Handbook



Oxford Public Schools
Department of Special Education and Student Services

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Chaffee School -	Linda Forte
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OVERVIEW

Section 504 of the Rehabilitation Act of 1973 is a federal statute that prohibits discrimination based upon disability. For many years its main thrust has been in the area of employment for individuals with disabilities and for members of minority groups. Within the last decade; the Office for Civil Rights (OCR), charged with enforcement of Section 504, has become pro-active in the field of education of individuals with disabilities.

Section 504 prohibits discrimination against persons with disabilities, including both students and staff, by school districts receiving funding from the federal government. Specifically, these obligations start for school districts when federal funds are received and include all programs or activities of the district receiving federal funds, regardless of whether the specific program or activity involved is a direct recipient of the federal funds. Included in the U. S. Department of Education regulations for Section 504 is the requirement that disabled students be provided with a free and appropriate public education (FAPE). These regulations require the process of identification, evaluation, provision of appropriate services, and procedural safeguards in every public school.

All individuals who are disabled under the Individuals with Disabilities Education Act (IDEA) are, therefore, protected under Section 504. However, all individuals who are determined to be disabled under Section 504 may not be disabled under the IDEA. These children require a response from the regular education staff and curriculum. With respect to most students with disabilities, many aspects of the Section 504 regulation concerning FAPE parallel the requirements of the Individuals with Disabilities Education Act and state law. In those areas, by fulfilling responsibilities under the IDEA and state law, a district is also meeting the standards of the Section 504 regulations.

Who has a Disability?

An individual may be considered disabled under the definition of Section 504 if the individual:

1. Has a mental or physical impairment, which substantially limits one or more major life activities. The term does not cover children disadvantaged by cultural, environmental or economic factors.
2. Has a record or history of such impairment; or
3. Is regarded as having such an impairment.

What are Major Life Activities?

Major life activities include functions such as:

- | | |
|--------------------------|----------------|
| -Walking | -Seeing |
| -Speaking | -Learning |
| -Caring for one's self | -Working |
| -Hearing | -Breathing |
| -Performing manual tasks | -Thinking |
| -Reading | -Communicating |

The above criterion needs to be justified with good evaluation data.

What does “Substantially limits” mean?

Substantially limits means the student is unable to or is significantly restricted as to the condition, manner, or duration under which he/she can perform the major life activity as compared to the average person. Factors the team must consider when making the determination include:

- Nature/severity of the impairment,
- Duration/expected duration of the impairment, and
- Permanent/long-term impact resulting from the impairment.

In determining whether or not an impairment “substantially limits” a major life activity, the impact of mitigating measure (i.e., hearing aids, glasses, medication) that the student uses on a regular basis should be taken into account. The impairment must substantially limit a major life activity despite the use of the mitigating measure.

What does “accessibility” mean under Section 504?

The student must be afforded an equal opportunity to enjoy the full range of services offered by the district. Buildings constructed or remodeled after June 3, 1977, must meet the full accessibility regulations in existence at that time. Buildings, which began

construction on or after January 26, 1992, must meet the ADA regulations for new construction.

What types of students may be eligible for services under Section 504?

Students who may be protected by Section 504, but who may not be eligible for services under the IDEA:

- students with Attention Deficit Hyperactivity Disorder (ADHD)
- students with communicable diseases (i.e., Hepatitis)
- students with temporary disabilities arising from accidents who may need short term hospitalization or homebound recovery
- students who had surgery and short term hospitalization or homebound recovery
- students with migraine headaches, with a lengthy history of missing school
- students with allergies or asthma
- students with diabetes, cancer, heart disease
- students who are drug addicted or alcoholic (as long as they are not currently using illegal drugs)
- students with environmental illnesses
- students with orthopedic, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis
- students with visual, speech, and hearing impairments

If a student has a disability and is making B's and C's in school, do they qualify for 504 services?

A physical or mental impairment that **substantially limits** a student's ability to learn **in comparison to the average student** population is a disability under Section 504. The argument that a student who is passing but "could do better" is not sufficient for Section 504 eligibility with respect to the major life activity of "learning."

Is a student who is currently using drugs eligible for 504 services?

Students who are currently using drugs illegally are NOT protected under Section 504. A drug-addicted student; however, enrolled in a recovery program is entitled to protection under Section 504 if he/she is not currently using drugs illegally and is determined to be a "qualified disabled person." Generally, a student attending a residential drug/alcohol program will receive tutoring in place of school during the time in the program. The school day provided is in the form of tutoring (up to 2 hours per day) which is the responsibility of the regular education system.

Is Section 504 part of Special Education?

Section 504 is **NOT** an aspect of special education. It is a civil rights law and is the responsibility of the general public education system. Just because a student possesses a disability does not mean that the student requires special education.

What is the process?

Although Section 504, taken literally, requires “special education” services if they are necessary to provide a student with FAPE, the needs of such student are most often met through an IEP developed pursuant to the IDEA rather than a Section 504 Plan. If the district suspects that a student may need “special education”, the district should first conduct an evaluation under the IDEA in order to determine the student’s eligibility, and only conduct an evaluation under Section 504 if the IEP team determines that the student is not eligible for services under the IDEA. Although all evaluations are conducted on a case-by-case, individualized basis, because of the interrelationship between Section 504 and the IDEA, it would take an extremely rare and unique set of circumstances by which the district would need to provide “special education” services through the development of a Section 504 plan.

The Section 504 regulatory provision at 34 CFR 104.35(b) requires the district to individually evaluate a student before classifying the student as having a disability or providing the student with accommodations, related services or special education. It is important to understand the difference between “evaluation” and “assessments”. Under Section 504, “evaluation” is the term used to describe the process of determining whether a student has a disability for the purposes of Section 504 (e.g., the consideration of a variety of sources in making a team determination at the eligibility meeting). On the other hand, “assessments” are the evaluative data considered by the Section 504 team to determine eligibility during the eligibility meeting.

Assessments used in the evaluative process must be selected and administered so as best to ensure 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. Section 504 also requires that tests and other evaluation materials include those tailored to assess the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

Must parental consent be obtained prior to conducting an initial evaluation?

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

What if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district **must** evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and the school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

Can the 504 meeting be held if the parent isn't present?

Neither Section 504 nor its implementing regulations specifically require that parents be members of a 504 team. The district strives to encourage parent attendance as an essential component of the process and at the 504 meetings. If a parent isn't in attendance, the parent should be contacted and participation encouraged in a manner agreed upon. The meeting; however, can be held without the parent if participation isn't possible.

Who are the 504 Coordinators?

The 504 Coordinator is your child's school counselor. They are the point person for any questions/concerns that you have regarding your child's 504 Plan and the process. They are supervised by the Assistant Superintendent of Student Services & Special Education.

What are the responsibilities of the 504 Coordinator?

It is the responsibility of the 504 Coordinator to oversee the 504 process which includes:

- Schedule and facilitate the 504 meeting
- Complete documentation for the 504 Plan and related paperwork
- Ensure plans are up dated, at least, annually and make changes as needed.
- Communicate to teachers, appropriate support staff, and principals regarding specific issues and follow-up.
- Secure approval/signature of parents for required documents
- Request appropriate services for the student

What are the responsibilities of the team members?

The team members are responsible for the implementation of all components of the 504 Plan.

Must teachers and other school staff comply with the 504 Plan?

Yes. The 504 Plan is developed to provide those accommodations the student with a disability needs in order to access the curriculum and other school activities. Although often unintentional, failure to implement the agreed upon plan may result in the parent filing a discrimination complaint. It is important that teachers be involved in developing the 504 Plan. They should provide input regarding the curriculum rigor and requirements

and suggest necessary accommodations. It is equally important that the 504 Plan be easily implemented and communicated to all school staff involved with the student.

Who can provide services?

Placement for the student is usually in a general education classroom. A student can receive instruction, related services, or accommodations within the general education classroom. All staff can provide services.

Do we need a 3-year reevaluation?

A 3-year reevaluation is not required under Section 504. The regulations state that Section 504 requires a "periodic" reevaluation. This should be determined by the 504 Coordinator and is essential if there are significant changes in the student's life, which require modifications to the Plan.

How do we determine exit from a 504 Plan?

If it is felt that the student no longer requires accommodations, then the 504 Coordinator should take steps to complete a reevaluation. Once the reevaluation is completed and the team is in agreement, a student may exit from a 504 Plan.

If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

Does the law prohibit discrimination or harassment of children with disabilities in schools?

Yes. There are three federal laws that prohibit discrimination against children with disabilities. The first two are Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). The third is the Individuals with Disabilities Education Act (IDEA), which is applicable under Special Education.

Section 504 is a law that makes it illegal for programs that receive federal funds to discriminate against people with disabilities. It requires schools to make their classes, programs, and activities accessible to all students.

The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and

telecommunications. It is mentioned/used in the school setting less often than Section 504, but does apply and provides essentially the same rights and protections to students in schools (private as well as public).

Who enforces Section 504?

The U.S. Department of Education's Office for Civil Rights (OCR) is responsible for enforcing the provisions of Section 504 as applied to publicly funded educational institutions. If an individual files a complaint against a school district, OCR will investigate the complaint under both Section 504 and the American Disabilities Act. The party may also file a court action.

What is the responsibility of the team if the student is placed in an outside agency?

It is the district's responsibility to ensure that all students residing in this district receive a free appropriate public education (FAPE) including any student with a Section 504 Plan or individualized education program (IEP) who has been referred to and/or resides in an outside agency program such as the Department of Mental Health inpatient and continuing care, intermediate care and/or residential care programs. As such, the following protocol should be followed as outlined in this handbook:

1. The district will convene the Team when it refers a student, or has been informed of a student's referral to an outside agency program.
2. The district will determine, through the team process, the student's eligibility for special education and/or related services under a Section 504 or IEP, whether and what evaluations the student shall receive, and the placement/services the student is to receive via the Section 504 plan or IEP, using the current district process for all students.
3. The district will ensure that the program developed will be implemented and monitored.
4. The Assistant Superintendent of Student Services & Special Education is the designated individual to respond to concerns regarding the student's identification, evaluation or educational placement that may arise regarding student in outside agency programs. The contact information is as follows:

Susan J. Henrichon, Ed.D.

Assistant Superintendent of Student Services & Special Education

Email: shenrichon@oxps.org

Phone: (508)987-6050 x 3

5. The district shall afford parents/guardians the procedural safeguards in conjunction with any decisions concerning the identification, evaluation, or placement of the students in outside agency programs.
6. The district will coordinate with outside agencies in the preferred communication method, via email/phone, regarding team meetings, evaluation information and other input from facility practitioners (including educational progress reports) to ensure that all aspects of this procedure are followed.

IDEA AND SECTION 504
- A Comparison-

<u>Component</u>	<u>IDEA</u>	<u>Section 504</u>
Special Education vs. Regular Education	A student is only eligible to receive IDEA services if the team determines that the student is disabled under one or more of the 13 specific disabilities, and requires specially designed instruction	A student is eligible if he/she meets the definition of qualified disability. It is not required that the disability adversely affect educational performance or that the student need special education in order to be protected
FAPE (free appropriate public education)	Defines FAPE as special education and related services. Students can receive related services under IDEA only if they need these services as part of special education.	Defines FAPE as regular or special education and related aids and services. Student can receive related aids and services under 504 even if they are not provide any special education
Accessibility	Requires that modifications must be made if necessary to provide access to a free appropriate education	Reasonable accommodations are made regarding building and program accessibility.
Procedural Safeguards	Requires notice to the parent/guardian with respect to identification, evaluation and/or placement.	Requires notice to the parent/guardian with respect to identification, evaluation, and/or placement.
Evaluations	A full comprehensive evaluation is required, assessing all areas related to the suspected disability. The student is evaluated by the TEAM. Requires informed consent before an initial evaluation is conducted.	Evaluation draws on information from a variety of sources in the area of concerns; decisions made by a group knowledgeable about the student, evaluation data, and placement options. Requires informed consent before an initial evaluation is conducted.
Reevaluations	Requires reevaluations to be conducted at least every 3 years.	Requires periodic reevaluations.
Independent Evaluations	Provides for independent educational evaluations at district expense if a parent or guardian disagrees with a district's evaluation and either the district or a hearing officer agrees.	Does not provide for independent educational evaluations at district expense; however, a district must carefully consider any such evaluations presented.
FAPE Delivery	Requires a written individual education program (IEP) with specific content developed by specific participants at an IEP meeting.	Requires a documented Section 504 plan developed by a group of persons knowledgeable about the student, student's evaluation data, and placement options.

Placement Procedures	When interpreting evaluation data and making placement decisions, a district must: a. draw on all information; b. assure all information is documented and considered; c. Ensure all eligibility decisions are made by the team knowledgeable about the student, meaning of the evaluation data, and placement options; and d. ensure that the student is educated with non-handicapped peers to the maximum extent appropriate (least restrictive environment) An IEP review meeting is required before any change in placement.	When interpreting evaluation data and making placement decisions, a district must: a. draw on all information; b. assure all information is documented and considered; c. Ensure all eligibility decisions are made by the team knowledgeable about the student, meaning of the evaluation data and placement options; and d. ensure that the student is educated with non-handicapped peers to the maximum extent appropriate (least restrictive environment)
Due Process	A district must notify a student's parent/guardian before the district takes any action regarding the identification, evaluation, or placement of their child. Requires written prior notice and specific content to be included in the notice.	A district must notify a student's parent/guardian before the district takes any action regarding the identification, evaluation, or placement of their child. Allows oral prior notice, but a district is wise to provide notice in writing.
Grievance Procedure	Requires each state education agency (DESE) have a special education grievance procedure, commonly called a citizen complaint procedure	Requires each district have an internal Section 504 grievance procedure for parents/guardians, students, and employees.
Exhaustion	Requires the parent/guardian to pursue administrative hearing before seeking redress in the courts	Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible.
Enforcement	Enforced by the U.S. Department of Education, Office of Special Education Programs (OSEP). Each state education agency and OSEP monitor compliance through complaint investigations and compliance reviews.	Enforced by the U.S. Department of Education, Office for Civil Rights (OCR). OCR monitors compliance through complaint investigations. The state education agency has no monitoring, complaint resolution, or funding involvement.
Employment	No provisions	Employment of persons with disabilities is regulated.