

SECTION 504 PARENT INFORMATION AND RIGHTS

What is Section 504?

Section 504 is a part of the Rehabilitation Act of 1973 that prohibits discrimination based upon disability.

Section 504 is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met.

Section 504 states that:

“No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”

Who is an “individual with a disability”?

As defined by federal law:

“An individual with a disability means any person who:

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

What is an “impairment” as used under the Section 504 definition?

An impairment as used in Section 504 may include any disability, long-term illness, or various disorder that “substantially” reduces or lessens a student’s ability to access learning in the educational setting because of a learning-, behavior-, or health-related condition.

Many students have conditions or disorders that are not readily apparent to others. They may include conditions such as specific learning disabilities, diabetes, epilepsy, and allergies. Hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious, but if they substantially limit that child’s ability to receive an appropriate education as defined by Section 504, they may be considered to have an “impairment” under Section 504 standards.

While the definition of a disabled person also includes specific limitations on what persons are classified as disabled under the regulations, it also specifies that only physical and mental impairments are included, thus “environmental, cultural, and economic disadvantage are not in themselves covered.”

Separating out the three prongs to the 504 definition: What are “major life activities”?

Major life activities include, but are not limited to: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others, and working. This may include individuals with AD/HD, dyslexia, cancer, diabetes, severe allergies, chronic asthma, Tourette’s Syndrome, digestive disorders, cardiovascular disorders, depression, conduct disorder, oppositional defiant disorder, HIV/AIDS, behavior disorders, temporary disabilities (e.g., broken writing arm, broken leg, etc.). Students who are currently using illegal drugs or alcohol are not covered or eligible under Section 504.

What does “substantially limits” mean?

Substantially limits is not defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, “this is a determination to be made by each local school district and depends on the nature and severity of the person’s disabling condition.” Additional guidance from the Americans with Disabilities Act states: “significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity when compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.”

Who can refer a child for consideration for evaluation under Section 504?

Anyone can refer a child for evaluation under Section 504. However, while anyone can make a referral, such as parents or a doctor, The Office of Civil Rights stated a memorandum that “the school district must also have reason to believe that the child is in need of services under Section 504 due to a disability.”

Therefore, a school district does not have to refer or evaluate a child under Section 504 solely upon parental demand. **The key to referral is whether the school district staff suspects that the child is suffering from a mental or physical impairment that substantially limits a major life activity and is in need of either regular education with supplementary services or special education and related services [**

If a parent requests a referral for evaluation, and the school district refuses, the school district must provide the parent with notice of their procedural rights under Section 504.

Who decides whether a student is qualified and eligible for services under Section 504?

According to the federal regulations:

“...placement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data,

placement options, least restrictive environment requirements, and comparable facilities”

Unlike Special Education, the federal regulations for Section 504 do not require or even mention that parents are to be a part of the decision-making committee. However, the JO Combs District we value parent’s input and would request that they be part of the discussion and plan.

What information is used in doing an evaluation under Section 504?

Under Section 504, no formalized testing is required. The 504 Committee should look at grades over the past several years, teacher’s reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records, and adaptive behavior information. **Schools must consider a variety of sources.** A single source of information (such as a doctor’s report) cannot be the only information considered. Schools must be able to assure that all information submitted is documented and considered.

Can my child be placed under Section 504 without my knowledge?

No. Parents should always be given notice in writing before their child is evaluated and/or placed under Section 504. Parents must also be given a copy of their child’s Section 504 accommodation plan if the committee determines that the child is eligible under Section 504.

What types of accommodations will my child receive if determined eligible under Section 504?

Each child’s needs are determined individually. Determination of what is appropriate for each child is based on the nature of the disabling condition and what that child needs in order to have an equal opportunity to compete when compared to the non-disabled. There is no guarantee of A’s or B’s or even that the student will not fail. Students are still expected to produce. The ultimate goal of education for all students, with or without disabilities, is to give students the knowledge and compensating skills they will need to be able to function in life after graduation.

Accommodations that may be used, but are not limited to, include:

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note-taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements

- Behavior intervention plans
- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Taping lectures
- Oral testing
- Individual contracts

Will my child still be in the regular classroom or will he/she be in a “special class”?

A Section 504 eligible child will always be in the regular classroom unless (according to federal regulations): “... the student with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required.

Can my child still be disciplined under Section 504?

Yes. Children under Section 504 are still expected to follow the district’s student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior if the child is going to be removed from the regular setting for longer than 10 days. This does not mean that a student with a disability cannot be sent to a discipline center or that they cannot go to in-school suspension, or be suspended from school for three days. Children having disabilities with behavioral components should have individual discipline plans as well as behavior intervention plans.

If I disagree with the school’s evaluation, will the school district pay for an outside independent evaluation?

Under Section 504, schools are not required to pay for an outside independent evaluation. If a parent disagrees with the school’s evaluation decision, they may request a due process hearing or file a complaint with the Office for Civil Rights.

How often will my child be re-evaluated?

While there are no specific time lines on this issue, students must be re-evaluated at least every three years or whenever there is going to be a “**significant change in placement**”. The campus 504 committee should re-evaluate your child’s plan every year to make sure that his or her accommodation plan is appropriate based on their current schedule and individual needs. The accommodation plan may be revised during the school year if needed.

Will my child still be able to participate in non-academic services?

Yes. Districts must provide equal opportunity in areas such as counseling, physical education and/or athletics, transportation, health services, recreational

activities, and special interest groups or clubs. However, the “**no pass, no play**” standard used for students in most states also applies to students under Section 504.

What Are My Rights as a Parent under Section 504?

As a parent or legal guardian, you have the right to:

1. **Receive notice** regarding the identification, evaluation, and/or placement of your child;
2. **Examine relevant records** pertaining to your child;
3. **Request an impartial hearing** with respect to the district's actions regarding the identification, evaluation, or placement of your child, with an opportunity for the parent/guardian to participate in the hearing, to have representation by an attorney, and have a review procedure;
4. **File a complaint with your school's Section 504 Coordinator, and possibly the District 504 Coordinator** - the Special Education Director serves in this capacity at JO Combs. The coordinator will investigate the allegations regarding Section 504 matters other than your child's identification, evaluation, and placement

Complaint / Grievance Procedure

The complaint must be in writing. It must include:

- your name and address (or that of whoever is filing the complaint);
- a brief description of the action you think was discriminatory;
- who did it; and
- the date it happened.

1. After you become aware of the action you think was discriminatory, you have 30 days to file a complaint. (If allegations of discrimination happened before this procedure was in place, they will be decided on a case-by-case basis.)

2. The school 504 Coordinator will discuss the allegation with you informally and try to resolve the problem. If the complaint cannot be resolved promptly, an investigation will be done. The investigation will be done by the 504 Coordinator for the building. The investigation must be thorough and impartial. Both sides shall have an opportunity to submit evidence about the complaint.

3. The school 504 Coordinator will send you a written report within 10 business days after you file the complaint. The report will say what the investigation found and how the problem will be resolved.

4. The school 504 Coordinator will keep files and records of any 504 complaints filed for that particular campus.

5. If you are not satisfied with how your complaint was resolved, you can ask that the case be reconsidered. You must ask for the reconsideration within 10 business days after you get the report on how your complaint will be resolved.

Send your request for reconsideration to the District Section 504 Coordinator.

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6. The grievance procedure is not the only way to resolve complaints. You do not have to wait until the grievance procedure is over. Filing a complaint with these other agencies does not take away your right to resolve the complaint through the grievance procedure. You have a right to file a complaint with the Office for Civil Rights (OCR) of the United States Department of Education.

The address of the OCR Regional Office responsible for Arizona is
Office for Civil Rights,
U.S. Department of Education,
Federal Building, 1244 Speer Boulevard, Suite 310,
Denver, CO 80204-3582.

7. You have rights regarding your child's educational records under the Family Educational Rights and Privacy Act (FERPA). FERPA gives the parent or guardian the right to:

- Inspect and review his/her child's educational record,
- Make copies of these records,
- Receive a list of all individuals having access to those records,
- Ask for an explanation of any item in the record,
- Request for an amendment to any report on the grounds that it is inaccurate, misleading, or violated the child's rights,
- Ask for a hearing on the issues if the school refuses to make the amendment.

One note of caution: Please do not substitute this information for independent and individual legal advice. Such advice should be sought from a licensed, qualified attorney in the field of Section 504 disabilities. **Every situation is different, and a good assessment of the risks involved in your particular situation can only be determined by consulting with your attorney and providing him or her with all of the relevant factual data.** Sometimes just one “minor” detail can make a material difference in the outcome of a case.