

## **What is a 504 Plan?**

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights statute prohibiting discrimination on the basis of disability in any program or activity receiving federal financial assistance. In public schools it guarantees the right to full participation and access to a free appropriate public education (FAPE). The law mandates that in order for nondiscrimination to occur, the school must provide services that level the playing field so that 504 eligible students have equal participation and opportunity for benefit.

## **Who is responsible for overseeing compliance?**

The United States Department of Education (USDE), Office of Civil Rights (OCR) has statutory responsibility for overseeing compliance.

Who is responsible for investigating and resolving complaints of noncompliance?

The United States Department of Education (USDE), Office of Civil Rights (OCR) is designated by the Department of Justice to resolving complaints. The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities and extends this prohibition to the full range of state and local government services, programs, or activities regardless of whether they receive federal assistance. The Americans with Disabilities Act of 2008 (ADAAA) expanded the definition of disability, broadening the eligibility criteria for students in public education.

## **What are the eligibility requirements for obtaining a Section 504 Plan?**

There are Three Prongs that are considered when determining eligibility for a Section 504 Plan:

1. **PRONG ONE:** The student must have a physical or mental impairment – defined as (A) 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; genitor-urinary;; hemic and lymphatic; skin; and endocrine; (B) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities (34 C.F.R. 104.3(j)(2)- that substantially limits – defined as significantly restricted as to the condition, manner, or duration under which the student can perform a particular major life activity as compared to the condition, manner, or duration under which the average student of the same age/grade level in the general population can perform the same major life activity one or more major life activities- defined as caring for oneself; walking; seeing; hearing; Speaking; Breathing; Learning; Working; Performing Manual Tasks; Eating; Standing; Lifting; Bending; Reading; Concentrating; Thinking; Sleeping.

Furthermore, in determining substantial limitation, mitigating measures cannot be used as a means of denying eligibility. The determination of whether impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of the mitigating

measures (for example, determine how the condition would impact the student if medication were not used or if other reasonable accommodations or services are used).

**2. PRONG TWO:** Individuals with a **record** or history of a physical or mental impairment that substantially limits one or more of the student's major life activities are protected under Section 504. For an example, a student who had an IEP but is dismissed for Special Education would qualify as having had a record of impairment.

**3. PRONG THREE:** Individuals who are regarded as having a physical or mental impairment when in fact such impairment may or may not actually exist are protected from discrimination under Section 504. A person falsely identified but regarded as having had a physical or mental impairment is protected under Section 504. For example, a student identified as with limited English is misclassified as having an intellectual disability, is protected nonetheless under Section 504.

The Section 504 Implementation Guide produced by Florida Department of Education lists the following situations as possibilities for consideration of a Section 504 Plan:

- When a parent or teacher initiates a request
- When a disability is suspected
- When a student exhibits a chronic health condition
- When a student exhibits persistent academic, learning, or behavioral problems and traditional behavior management approaches have been ineffective
- When a student exhibits behaviors that result in suspension or expulsion and traditional behavior management approaches have been ineffective
- When a student is evaluated but not eligible for a disability under IDEA (i.e., the student is not sufficiently disabled to meet eligibility criteria or is not in need of special education)

District based Section 504 Teams in Florida may recommend the following process:

- Student record and work sample review;
- Direct observation in the natural setting; interview with the student, parent, and school personnel;
- Administration of assessment measures.

Although a 504 "evaluation" may include formal assessment, it is not required. Only an evaluation sufficient to provide information to determine the existence of a disability under Section 504 need be obtained. The 504 team determines what data is necessary to make the appropriate eligibility and services decisions.

Section 504 regulatory provisions require school districts to individually evaluate a student. An impairment (e.g., ADHD) in and of itself is not a disability—the impairment must substantially limit one or more life activities. Although a medical diagnosis of ADD/ADHD is one source of data to consider, a medical diagnosis is neither required nor sufficient for establishing eligibility under Section 504. The multidisciplinary committee (i.e., 504 team) must draw from a variety of sources to interpret evaluation data

and make eligibility decisions. The Section 504 team determines whether a medical evaluation is necessary for the team to make the eligibility and placement decision. If the team, on the basis of existing evaluation data from a variety of sources, can make the required determinations without a medical evaluation, no medical evaluation is required. If medical information is deemed necessary to determine whether the student is 504 eligible, then the school district is responsible for providing the evaluation at no cost to the parent.

**Important Information for Parents:**

A student may be deemed eligible for a Section 504 Plan but not for an Accommodation Plan.

A student who either 'has a record of disability' or is 'regarded as disabled' does not meet public school criteria for a 504 Plan. Unless the student has an impairment that substantially limits a major life activity, the student may not trigger the protections required for a FAPE through a 504 Plan.

IEP Coaching & Advocacy [www.iepcoachingandadvocacy.com](http://www.iepcoachingandadvocacy.com)