

Anchorage School District



Section 504
Parent Rights
&
Frequently Asked Questions

Introduction
Assessment
Eligibility
Placement
Procedural Safeguards
Grievance Process
Terminology

Introduction

Q. What is Section 504?

A. A broad civil rights law that protects the rights of individuals with mental or physical impairments in programs and activities that receive federal financial assistance from the U.S. Department of Education, including school programs.

Q. Who does Section 504 protect?

A. Section 504 protects all qualified students with impairments, defined as those having any permanent or recurring physical or mental impairment that substantially limits one of more major life activities (including learning). Section 504 covers all students who meet this definition, even if they do not fall with the special education categories of impairments and even if they do not need to be in a special education

Q. What is a Section 504 Plan?

A. A Section 504 Plan is a document that describes the student's strengths, weaknesses, type of impairment and the accommodations needed. Accommodations may include but are not limited to: a ramp to provide access to a building or classroom, modified attendance or grading policy, modified class schedule, preferential seating and other classroom accommodations.

Q. What is a Section 504 Team?

A. While the school principal has responsibility to ensure compliance with Section 504 and its regulations, a Section 504 team works with the principal on student-specific issues. A Section 504 team consists of the student's parents and a group knowledgeable about the student, assessment data and placement options. A Section 504 team usually includes the classroom teacher or team of teachers who work with a student and may include any or some of the following: school counselor, school nurse, special education staff, school psychologists and representatives from outside agencies (e.g. medical doctors, treating psychologists or therapists) who have special knowledge of a student's qualifying medical or mental health impairment.

Q. What is an appropriate education under a Section 504 plan?

A. An "appropriate education means an education comparable to that provided to students without impairments. This may be regular or special education. Students can receive related services under Section 504 even if they are not provided any special education. These are to be provided at no additional cost to the student and his or her parents. Section 504 requires provision of educational and related aids and services that are designed to meet the individual educational needs of the qualified student.

Q. Does a temporary impairment qualify a student for Section 504 protection?

A. No, a temporary impairment does not constitute a disability for purposes of Section 504—unless, its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (and expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

Q. What is the Team school decides that a 504 student needs special education/related services in the regular classroom setting in order to participate in a school program?

A. It is rare that special education services will be provided to 504 students. Generally, if the student needs special education services, the student will be evaluated for special education, not 504. However, on the rare occasion that special ed services could be accessed for 504 students, these services must be approved by the EEO Director before they are written in the 504 plan.

Q. When should a parent or school staff person consider referring a student for Section 504 assessment?

A. If there is a long term or reoccurring impairment or disability and any one or combination of the following events occurs, a 504 should be considered:

1. When expulsion, denials, or services are being considered for any student.
2. When retention is being considered for any student.
3. When a student shows a pattern of not benefiting from the instruction being provided.
4. When a student is referred for a special education assessment and it is determined that a special education assessment is not warranted.
5. When a student is evaluated but found not to qualify for special education services.
6. When a student is released from special education services.
7. When a student exhibits a chronic health condition.
8. When a student is identified as "at risk", exhibits the potential for dropping out of school or returns from a juvenile detention facility.
9. When substance abuse is an issue.
10. When a disability of any kind is suspected.
11. When the school is considering new construction or remodeling is being considered (issues of physical access may arise).

Q. Can a 504 Plan transfer with a student?

A. Yes, 504 placements are not “closed out” at the end of a year. Rather, 504 plans follow the student and, once in place, are good for a minimum of three years. Since 504 Plans are site specific, plans are reviewed annually or whenever the data or

circumstance for the student changes. If a student is scheduled to transition to a new grade, level or school, the 504 Team should, if possible, include a representative of the new school to assist in reviewing the existing 504 plan.

Q. Is there a post-secondary transition requirement under Section 504?

A. No, there is no transition requirement under Section 504. However, it is strongly advised by the Office for Civil Rights that a transition conference be held for all students with impairments prior to graduating from high school. Those students protected by Section 504 plans do need, at a minimum, the documentation of their disability and the accommodations that have been provided to them in their secondary setting. It is advised by OCR that all schools inform students with impairments that they may be eligible for protections under Section 504 and the Americans with Impairments Act.

Q. Where can a parent or student get information on Section 504?

A. Information about Section 504 policy for the Anchorage School District can be obtained from the administrator at each school site or the ASD website at www.asdk12.org/index.asp or by contacting:

Margo Bellamy,
EEO Director
Section 504 Compliance Officer
Anchorage School District
Equal Employment Opportunity
ASD Education Center
5530 E. Northern Lights Blvd.
Anchorage, AK 99504-3135
907 742-4132

STeP CENTER
Anchorage School District
907 742-3872

U.S. Department of Education
Office for Civil Rights
206-220-7900
OCR_Seattle@ed.gov

Assessment

Q. What is a Section 504 assessment?

A. The assessment must draw upon information from a variety of sources and from individuals who are knowledgeable about the student, assessment data and placement options.

Q. What is reasonable justification for referring a student for assessment?

A. School districts may always use regular education intervention strategies to assist students with difficulties in school. However, Section 504 requires schools personnel to refer a student for an assessment for possible special education, or modification to the regular education program if the student, because of a disability or impairment, needs such services.

Q. How much is enough information to document that a student has a disability?

A. The amount of information required is determined by the Section 504 team gathered to assess the student. The Section 504 team should include persons knowledgeable about the student, the meaning of the assessment data and the academic placement options.

The Section 504 team members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. Teams must draw from a variety of sources that may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

Q. Can a medical diagnosis suffice as an assessment for the purpose of providing an appropriate education?

A. No, a physician's medical diagnosis may be considered among other sources in assessing a student with a disability or believed to have a disability which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

Q. Is a Section 504 reassessment similar to an IDEA reassessment? How often should it be done?

A. Yes. Section 504 specifies that reassessment, in accordance with the IDEA, comply with Section 504. The 504 regulation requires that reassessments be conducted periodically. For the ASD, this means that 504 eligibility will be reassessed every three (3) years or, whenever the student information changes.

Section 504 also requires the school district to conduct a manifestation determination prior to or as soon as the school becomes aware of a significant change of placement. The OCR considers exclusion (out of school suspension) from the educational

program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

Q. Must a district pay for independent assessments?

A. No, provisions of Section 504 do not require independent assessments and the district is not required to pay. However, 504 Teams should consider any such assessments presented.

Eligibility

Q. Who in the assessment process makes the ultimate decision regarding a Student's eligibility for services under Section 504?

A. The Section 504 regulation at 34 C.F.R. 104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the assessment data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

Q. Are there any impairments which automatically qualify a student for protection under Section 504?

A. No. An impairment, in and of itself, does not automatically qualify a student for protection under Section 504. The impairment must be permanent or reoccurring and substantially limit one or more major life activities in order to qualify a student for protection under Section 504.

Q. Does a medical diagnosis of an illness automatically qualify a student for services under Section 504?

A. No. A medical diagnosis of an illness does not automatically qualify a student for services under Section 504. The illness must be permanent or reoccurring and cause a substantial limitation on the student's ability to learn or other major life activities.

Q. Is there a single formula or scale that measures substantial limitation?

A. No, the determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. Section 504 requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

Q. If a student is referred for special education and does not qualify, is the student automatically eligible for Section 504?

A. No, there is no automatic eligibility under Section 504. The question under Section 504 is whether a physical or mental impairment exists and results in a substantial limitation in a major life activity. All decisions must be made on an individual student basis.

Q. When a student is released from special education, does the district have to continue to provide services because the student has a record of an impairment?

A. No, consideration should be given for Section 504 eligibility for protection from discrimination but eligibility is not a foregone conclusion. Eligibility procedures must still be implemented and the following question must be answered in the affirmative, "does the student have an impairment that substantially limits a major life activity?"

Q. Is every student with an IEP (eligible for special education services) also eligible for protection under Section 504?

A. Yes, the Office of Civil Rights cannot conceive of any situation which a student is eligible for special education would not also be entitled to the protection extended by Section 504. This does not mean that a Section 504 plan should be developed in addition to the IEP.

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

A. No, the protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district reassesses a student and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

Q. If a student is diagnosed with Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder, is he or she automatically eligible for a Section 504 plan?

A. No, there is no automatic eligibility under Section 504. The question under Section 504 is whether the identified disability (ADD or ADHD) results in a substantial limitation in a major life activity. All decisions must be made on an individual student basis.

Q. Are current illegal users of drugs and alcohol excluded from protection under Section 504?

A. Yes, section 504 excludes from the definition of a student with impairment, and from Section 504 protection, any student who is actively engaged in the illegal use of drugs and alcohol (with exceptions for persons in rehabilitation programs for addiction).

Q. Are current users of alcohol excluded from protection under Section 504?

A. No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with impairments using drugs or alcohol to the same extent as students without impairments.

Q. If a team has determined that a student does not qualify for a 504 plan, when does the team reconvene?

A. The team will reconvene only when a member of the team (including the parent) brings new information (e.g.: a new diagnosis of medical or mental health condition) to the team for consideration.

Placement

Q. What kind of placement is required by Section 504?

A. A 504 requires that schools provide a free and appropriate public education to eligible students covered under Section 504. The student shall be placed in the regular educational environment unless the student's education cannot be achieved satisfactorily even with the use of supplementary aids and services.

Q. What are the placement procedures for a Section 504 student?

A. When interpreting assessment data and making placement decisions, the law requires that the Section 504 team:

1. Draw upon information from a variety of sources;
2. Assure that all information is documented and considered.
3. Ensure that the eligibility decision is made by a group of persons including those knowledgeable about the student, the meaning of assessment data and placement options.
4. Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate (least restrictive environment)
5. A meeting is not required for any change in placement.

Q. What kind of plan is required?

A. Anchorage School District procedures require that a Section 504 team use a written plan to document that a group of persons knowledgeable about the student convened and specified the agreed upon related services, the accommodations and the modifications that are required for a specific Section 504 eligible student.

Q. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

A. Regular education teachers must implement the provisions of a Section 504 plan as it pertains to their classroom or subject area. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

Procedural Safeguards

Q. What procedural safeguards are required by Section 504?

A. Section 504 requires notice to the parent or guardian with respect to identification, assessment and/or placement. Special education procedures will suffice for Section 504 implementation. Written notice is not required but is good professional practice. Notice of change of placement is required only before a "significant change in placement."

Q. Must a recipient school district obtain parental consent prior to initiating a Section 504 assessment?

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

Q. If so, in what form is consent required?

A. Anchorage School District procedures require parental consent to be in written form.

Q. What is a school's responsibility under Section 504 to provide information to parents and students about its assessment and placement process?

A. Section 504 requires districts to provide notice to parents explaining any assessment and placement decisions affecting their student and explaining the parents' right to review educational records and appeal any decision regarding assessment and placement through an impartial hearing.

Q. What if parents or guardians disagree with the identification, assessment or placement of a student?

A. A district is required to provide due process:

1. An impartial hearing for parents who disagree with identification, assessment or placement.
2. The parent must have an opportunity to participate and be represented by counsel.
3. Local district policy clarifies further details of the impartial hearing.

Q. Does Section 504 require any special discipline procedures?

A. The district must conduct a manifestation determination to reassess. The Section 504 team must reassess any student who has a Section 504 plan when implementing any disciplinary removal for more than 10 days. If the team determines that there is nexus between the student's disability and the behavior, then the student may not be removed for more than 10 consecutive school days unless the behavior is drug or alcohol related. There is no automatic right to remain in current educational placement and a student's right to a free appropriate public education may cease due to a disciplinary action.

Q. Does a parent have a right to review student records under Section 504?

A. Actually, the Family Educational Rights and Privacy Act (FERPA) specify parent or guardian rights to education records. This Act gives the parent or guardian to the right to:

1. Inspect and review his/her student's educational records;
2. Make copies of these records;
3. Receive a list of all individuals having access to those records;
4. Ask for an explanation of any item in the records;
5. Ask for an amendment to any report on the grounds that it is inaccurate, misleading or violates the student's rights.
6. Have a hearing on the issue if the school refuses to make the amendment.

Grievance Process

Q. How can a grievance be filed?

A. Section 504 requires a district to designate a Section 504 compliance officer and a grievance procedure to investigate complaints alleging noncompliance with Section 504.

To file a 504 grievance or complaint, parents can use either of the following ASD Problem-solving options:

- Request a review of the Team's decision, including the process used by the Team to arrive at its decision, by writing a letter to the principal. The principal will forward this letter to the EEO Director who will conduct the review and work with the parent and the school to resolve the issues.
- Use the ASD Citizen Complaint process. The form is located on the Anchorage School District website at: <http://www.asdk12.org/aboutasd/ProblemSolv/>.
- Parents may also contact the EEO Director directly @ 742-4130.
- "Request for a formal Section 504 hearing must be made to the District 504 Coordinator within fifteen (15) calendar days after receipt of the Section 504 meeting determination. In each case where a hearing has been requested, the District will designate an impartial hearing officer who is not an employee of the District. The Section 504 Hearing Officer shall render a decision in writing to the District and parent/guardian of the student within 30 days after the completion of the Section 504 hearing. Review of the hearing officer's decision is available through an administrative appeal under Rule 602 of the Alaska Appellate Rules to the Alaska Superior Court."

504 Terminology

Accommodation: alters the way a student receives instruction or demonstrates their knowledge of course content, and allows them equal opportunity to participate. An accommodation does not alter the standards of the course. A student receiving only accommodations would receive the grade they earn, judged by the same standards as non-disabled students.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aids, benefits, or services available to all students.

Assessment: the Section 504 team must draw on information from a variety of sources in the area of concern, decisions made by a group knowledgeable about the student, assessment data and placement options to determine whether a student is eligible for a Section 504 plan.

Free and appropriate public education (FAPE): a term used in the elementary and secondary school context; refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with impairments as adequately as the needs of students without impairments are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, assessment and placement, and procedural safeguards

Major Life Activities: include walking, speaking, seeing, talking, breathing, self-care, hearing, manual tasks and learning.

Manifestation Determination: the Section 504 team must reassess any student who has a Section 504 plan prior to any disciplinary removal for more than 10 days. If the team determines that there is nexus between the student's disability and the behavior complained of, then the student may not be removed for more than 10 consecutive school days unless the behavior is drug or alcohol related.

Modification: reduces or eliminates the standards of the course or activity. This is not the intent of Section 504. Under Section 504, the team seeks to make appropriate accommodations. As a rule, under section 504 a student will not receive a modified curriculum or grade.

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

Section 504 Team: a team that consists of the student's parents and a group knowledgeable about the student, assessment data and placement options. A Section 504 team usually includes the classroom teacher or team of teachers who work with a student, and may include any or some of the following: school counselor, school nurse, special education staff, school psychologists and representatives from outside agencies (e.g. medical doctors, treating psychologists or therapists) who have special knowledge of a student's qualifying medical or mental health impairment.

Substantial Limitation: means that the student is unable to perform a major life activity that the average student of approximately the same age can perform or is significantly restricted as to the condition, manner or duration under which a particular life activity is performed compared to the average student of approximately the same age. The impairment must be substantial and somewhat unique, rather than commonplace, when compared to the average student of approximately the same age.