



**Anchorage School District**

*Educating All Students for Success in Life*

# Questions and Answers about Section 504

Office of Special Education, Anchorage School District  
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## **ASD Statement of Non-Discrimination**

It is the policy of the Anchorage School District to provide equal educational and employment opportunities, and to provide services and benefits to all students and employees without regard to race, color, religion, disability, national origin, gender, marital status, change in marital status, pregnancy, parenthood or other prohibitions. This policy is consistent with numerous laws, regulations, and executive orders enforced by various federal, state, and municipal agencies, including but not limited to Executive Order 11246, Title 41, part 60-1, 60-2, 60-3, 60-20, Title VI and VII of the 1964 Civil Rights Act, Title IX of the Education Amendments Act of 1972, and Section 504.

Inquiries or complaints may be addressed to the School District's Equal Employment Opportunity Director, who also serves as the Title IX Coordinator, ASD Education Center, 5530 E. Northern Lights Blvd., Anchorage, AK 99504-3135, (907) 742-4132 or to any of the following external agencies: Alaska State Commission for Human Rights, Anchorage Equal Rights Commission, Director of the Office for Civil Rights, Department of Education, Department of Health and Human Services.

## **INTRODUCTION**

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal funds from the U.S. Department of Education (ED). Section 504 provides: “No otherwise qualified individual with a disability in the United States...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...”

The Section 504 regulation requires a school district to provide a “free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability. FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual needs.

## **STUDENTS PROTECTED UNDER SECTION 504**

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to have a physical or mental impairment that substantially limits one or more major life activities. Students with a record of such an impairment, or be regarded as having such an impairment are eligible for the non-discrimination protection. Section 504 requires that school districts provide FAPE to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

### **1) What is a physical or mental impairment that substantially limits a major life activity?**

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) 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; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act, Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

### **2) What services are available for ASD students who qualify under Section 504?**

Section 504 requires ASD to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

**3) Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?**

No. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If ASD re-evaluates a student in accordance with the Section 504 regulation at 34 C.F.R. 104.35 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.

**4) Are current illegal users of drugs excluded from protection under Section 504?**

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from 504 protection, any student who is currently engaged in the illegal use of drugs (with exceptions for persons in rehabilitation programs).

**5) Are current users of alcohol excluded from protection under Section 504?**

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 disabilities using drugs or alcohol to the same extent as students without disabilities.

## **EVALUATION**

Determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

**6) What is an appropriate evaluation under Section 504?**

ASD has established standards and procedures for initial evaluations and periodic re-evaluations of regular education students who need or are believed to need special education accommodations and/or related services because of a disability. The Section 504 regulation, at 34 C.F.R. 104.35(b), requires ASD to individually evaluate a student before classifying the student as having a disability or providing the student with special education accommodations. Tests used for this purpose 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 evaluate 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.

**7) How much is enough information to document that a student has a disability?**

The amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulation, at 34 C.F.R. 104.35(c), requires that ASD draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

**8) What process should ASD use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?**

Adoption of a separate process for evaluating the needs of students under Section 504 requires that the ASD must follow the requirements for evaluation specified in the Section 504 regulation at 34 C.F.R. 104.35.

**9) Must ASD consider “mitigating measures” used by a student in determining whether the student has a disability under Section 504?**

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures.

Congress did not define the term “mitigating measures” but rather provided a non-exhaustive list of “mitigating measures.” The mitigating measures are as follows: 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; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. “Ordinary eyeglasses or contact lenses” are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas “low-vision devices” (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

**10) Is there a single formula or scale that measures substantial limitation?**

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulation, at 34 C.F.R. 104.35 (c), requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

**11) Are there any impairments which automatically qualify a student for protection under Section 504?**

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

**12) Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?**

No. A physician’s medical diagnosis may be considered among other sources in evaluating 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.

**13) Does a medical diagnosis of an illness automatically qualify a student for services under Section 504?**

No. A medical diagnosis of an illness does not automatically qualify a student for services under Section 504. The illness must cause a substantial limitation on the student’s ability to learn or other major life activities. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student’s ability to learn or other major life activity, or only results in some minor limitation in that regard.

**14) How should ASD handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?**

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

**15) What should ASD do if a parent refuses to consent to a case study evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?**

Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and ASD suspects a student has a disability, the IDEA and Section 504 provide that ASD may use due process hearing procedures to override the parents' denial of consent.

**16) Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?**

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

**17) Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?**

ASD requires an annual review of each student's 504 plan. The review must be completed not later than the end of the First Quarter each school year. Periodic re-evaluation is also required. This may be conducted in accordance with the IDEA regulation, which requires re-evaluation at three-year intervals or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation.

**18) Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?**

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA comply with Section 504. The Section 504 regulation requires that re-evaluations be conducted periodically. Section 504 also requires ASD to conduct a re-evaluation prior to a significant change of placement. The Office of Civil Rights (OCR) considers an exclusion 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.

**19) What is reasonable justification for referring a student for evaluation for services under Section 504?**

ASD may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires ASD to refer a student for an evaluation for possible modification to regular education if the student, because of disability, needs or is believed to need such services.

**20) A student is receiving services that ASD maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can ASD do to ensure continuation of services?**

ASD 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.

**21) A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?**

The student may be eligible for services under Section 504. ASD must determine whether the student has an impairment which substantially limits his or her ability to learn or other major life activities and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

**22) How should ASD regard a temporary impairment?**

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 (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

## **PLACEMENT**

**23) If a student qualifies for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?**

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements is to comply with IDEA.

**24) Must ASD develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?**

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act, in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures.

In the Amendments Act, Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

**25) What is ASD's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?**

If a student with a disability transfers to ASD from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at ASD, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options

determines the plan is appropriate, the ASD is required to implement the plan. If the ASD determines that the plan is inappropriate, the ASD is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student.

**26) 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?**

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504, and in rare instances teachers may be held personally liable.

**27) What is the difference between a regular education intervention plan and a Section 504 plan?**

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school.

## **PROCEDURAL SAFEGUARDS**

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

**28) Must ASD obtain parental consent prior to initiating a Section 504 evaluation?**

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

**29) What procedural safeguards are required under Section 504?**

ASD is required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

**30) What is ASD's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?**

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

**31) Is there a mediation requirement under Section 504?**

No. However, per a memorandum dated December 6, 2007 the ASD has established a policy that permits mediation if both parties agree to mediation.

### **504 Terms**

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

**Accommodation:** a term correctly used in the context of public accommodations and facilities; an individual with a disability may not be excluded, denied services, segregated or otherwise treated differently than other individuals by a public accommodation or commercial facility; (term is not to be confused with "reasonable accommodation," discussed below)

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

**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 disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

**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.

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

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](http://www.asdk12.org/index.asp) or by contacting:

Disability and Mental Health Coordinator  
Anchorage School District  
Special Education  
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