

# Section 504 | CHADD

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Section 504 is a federal civil rights statute that says schools cannot discriminate against children with disabilities. It says that schools that receive federal dollars must provide eligible children with disabilities with an equal opportunity to participate in all academic and non-academic services the school offers. The school must also provide appropriate accommodations based on their individual needs.

These accommodations are often simple changes that can help the child with the disability. Sometimes these accommodations include special services such as using a tape recorder for note taking, giving the student a quiet place to work, or access to a computer in school for written work. Students who are eligible to receive services under Section 504 receive instruction through the regular education curriculum and at the same level as their peers without disabilities. Students under Section 504 must also participate in state required assessments.

## Who is Eligible?

A student is eligible for Section 504 if the child has a physical or mental condition that **substantially limits a “major life activity.”** Major life activities for a child in school include learning and/or activities in addition to walking, talking, breathing, caring for oneself, etc. Additional major life activities added by the 2008 reauthorization of the Americans with Disabilities Act (and now called the Americans with Disabilities Act Amendments Act [ADAAA]) include such things as reading, concentrating, thinking, communicating with others, and major bodily functions.

To qualify under Section 504, a child’s disability must be serious enough, or “substantially limiting,” that the child needs specialized services or accommodations. All determinations of substantial limitation must be made without regard to the “ameliorative effects of mitigating measures.” This means that the question of whether or not a child has a “substantial limitation” in a particular area is answered before, and not after, any intervention for that limitation is implemented. “Mitigating measures” includes such things as medication, assistive technology, learned behavioral modifications, psychotherapy, and/or reasonable accommodations. Children covered under Section 504 are usually children with less serious disabilities, or children who do not otherwise qualify for services under IDEA but still have a disability that is substantially limiting in the educational setting.

## What Does Section 504 Provide?

If a child is determined to be eligible under Section 504, the school must develop a Section 504 Plan. The plan must include appropriate accommodations, evidence-based interventions, and/or related services that are also scientifically or research-based. The plan must provide

the eligible child with an equal opportunity to succeed based on the child's individual needs when compared to same age, non-disabled peers. This is defined as a "free appropriate public education" (FAPE) under Section 504. (Although similar to FAPE through the IDEA, FAPE through Section 504 is an equal opportunity standard, whereas it is an educational benefit standard under IDEA.) Many mistakenly think that a Section 504 Plan is a standard checklist or form used for all eligible children. It isn't. While a form or checklist may be a helpful starting point, a good Section 504 Plan is developed to meet the child's specific, individual needs and not merely some template that the school district may have available.

Accommodations should be documented in the written Section 504 Plan (sometimes referred to as an Individual Accommodation Plan, or IAP, and not to be confused with an Individualized Education Program, or IEP). Here are several examples of appropriate accommodations that might be included in a Section 504 Plan for a child with ADHD:

1. Reducing the number of homework problems without reducing the level or content of what is being taught.
2. Giving the student a quiet place to work, free from distractions.
3. Providing clear and simple directions for homework and in-class assignments.
4. Giving tests in a quiet place, breaking tests into small pieces, modifying test format, and/or providing extra time.
5. Using audio recording devices or giving the student a copy of notes.
6. Using positive behavioral intervention techniques, including positive reinforcement.
7. Having a nurse or administrator oversee a student's medication administration and/or monitor a medication's effects.
8. Meeting with the school counselor to work on academic and/or behavioral challenges.
9. Creating a communication notebook so that parents and teachers may keep each other informed of the child's progress or difficulties.

## **Evaluation**

Section 504 requires a child to have an evaluation before receiving a 504 Plan. An evaluation does not have to be formalized testing, but it must consider information from a variety of sources (parent notes, doctors' notes if available, test scores, observations, etc.). Decisions about who qualifies for Section 504 cannot be based solely on a single source of data (i.e. a doctor's diagnosis or grades). A medical diagnosis is NOT required under Section 504. Once a child has been deemed eligible for accommodations, a Section 504 Plan is then developed by a Section 504 committee. Before any significant changes are made to an existing plan, the child should be evaluated again. A significant change in placement includes changes due to disciplinary actions longer than 10 days as well as changes that result from moving from one grade to another.

Parent participation is not an entitlement right under Section 504 as it is under IDEA. Depending on the procedures used by your local school district, parents or legal guardians may or may not have a right to active participation or decision-making through Section 504.

Parents should check with their child's individual school district to determine what their procedure is for implementing Section 504.

### **Discipline under Section 504**

Students with disabilities under both Section 504 and IDEA are provided with special procedures in situations involving disciplinary removals from their regular educational setting. Discipline procedures under Section 504 are similar, but not identical, to discipline procedures under IDEA. Students with a Section 504 Plan may be suspended or expelled in the same manner as any child without a disability for up to 10 school days. After removals of 10 consecutive days, or a pattern of short term removals amounting to 10 days or more, a meeting (called a **manifestation determination**) must be held to determine if the behavior subject to disciplinary action is linked to the child's disability. If there is a direct link between the behavior and the disability, the child may not be sent to a disciplinary or alternative education placement. If there is no link between the behavior and the disability, the child may be disciplined in the same manner as any other child without a disability. There are two exceptions to this rule:

1. If a child who is being served by Section 504 is caught "currently engaging in the use of illegal drugs or alcohol," the child forfeits all rights and procedural protections under Section 504, including the right to a manifestation determination, and may be disciplined in the same manner as any other child without a disability.
2. A child caught in possession of a firearm in any manner may be immediately removed to an alternative education placement where a manifestation determination must be conducted within 10 school days. If there is a link to the disability, the child may still be removed for up to 45 school days. If there is no link to the disability, the child may be disciplined in the same manner as any other child without a disability.

### **How do I file a complaint about my school or school district?**

Local school districts are responsible for putting the provisions of Section 504 in place. However, ultimate responsibility for enforcing these provisions rests with the Office of Civil Rights of the U.S. Department of Education.

If you believe that a school or school district has violated this law and your complaint has not been resolved at the local level, you may file a formal complaint with Office of Civil Rights by contacting the nearest state/regional office. You may also call the OCR Hotline at 1-800-421-3481. A complaint may also be filed using the OCR Online Complaint Form.

### **Additional Resource:**

Free Appropriate Public Education under Section 504

Official Department of Education requirements for FAPE for students with disabilities under Section 504