



QUARTERLY UPDATE

Ohio Coalition for the Education of Children with Disabilities

JULY-SEPTEMBER 2021

TOP NEWS INSIDE

- Just what is a Section 504?
- Just what is a “disability” under Section 504?
- What can you do if you suspect that a section 504 plan may help your child?
- What does an Evaluation for a Section 504 Plan entail?
- How Does a Section 504 team decide if a Child is eligible for services?
- How Does the team go about developing a Section 504 plan?
- What happens after the Plan is developed?
- Can a student have both an IEP and a 504 plan?
- What happens After high school?
- What can you do if you disagree with the 504 plan that is developed?

Your Child and Section 504 of the Rehabilitation Act of 1973

Do you suspect that your child has a disability? Does the disability interfere with your child’s ability to have equal physical or academic access at school? If the answer is yes, then you may be interested in learning more about a Section 504 Plan, and how it can help your child to be successful at school.



This document contains links to other resources. Clicking the title of each article will provide you with more information from the source.

Just what is Section 504?

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute. A foundational principle is that it prohibits discrimination or harassment based on a disability. Public schools (including colleges, career centers, and technical schools) and private schools that receive Federal funding are required to comply with Section 504. A recipient of Federal funds CANNOT exclude individuals solely based on their disability and may not deny the benefits of their program or services to a qualified person with a disability.

Section 504 requires school districts to provide a “free appropriate public education” (FAPE) to each child with a disability, regardless of the nature or severity of the disability. This means providing regular or special education and related aids and services designed to meet the individual education needs of a student with a disability as adequately as the needs of a student without a disability. The FAPE is to be provided at no cost to the parent.



Just what is a “disability” under Section 504?

There are three categories under which someone may qualify as having a disability under Section 504. The **first category** is a mental or physical impairment that substantially limits one or more MAJOR LIFE ACTIVITY. The **second category** may be having a record of such an impairment. Finally, the **third category** is to be regarded as having such an impairment (treated as such).

Examples of major life activities are caring for oneself, listening, seeing, walking, hearing, communicating, working, breathing, and learning. Major life activities may be any number of **physiological** conditions, or **mental/psychological** disorders or conditions.

A temporary impairment can constitute a disability for purposes of Section 504 if 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 limits a major life activity of the affected individual.

An impairment that is episodic or in remission may still be a disability under Section 504 if it would substantially limit a major life activity when active. Examples of this type of impairment may include seizure disorders, asthma attacks, or cancer.

Effective January 1, 2009, the ADA Amendment Act of 2008 went into effect, resulting in the definition of a disability being construed more broadly. This change made it possible for more students to qualify for Section 504 Plans. For example, students with diabetes or a food allergy who previously had only a health plan may now qualify for a Section 504 plan. It is not unusual for a child with a disabling condition that did not qualify for services under IDEA 2004 to qualify under Section 504.

To view Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools, [click here](#).



What can you do if you suspect that a Section 504 Plan may help your child?



The first step in obtaining a Section 504 Plan is to make a written request for an evaluation to your child's school district. It may be appropriate to address the letter to the school district's Principal, Special Education Director, or Section 504 Coordinator.

Keep in mind that school districts are obligated to evaluate any student with a disability, who may have a need, or who is believed to need accommodations, special education, or related services. It is also important to note that your child **does not** have to have failing grades to be considered for an evaluation under Section 504, since educational impact is NOT limited to academic failure. In other words, a student's impairment does not have to substantially limit the activity of learning to be eligible under Section 504. The 504 team is required to consider all major life activities in determining whether a disability exists.

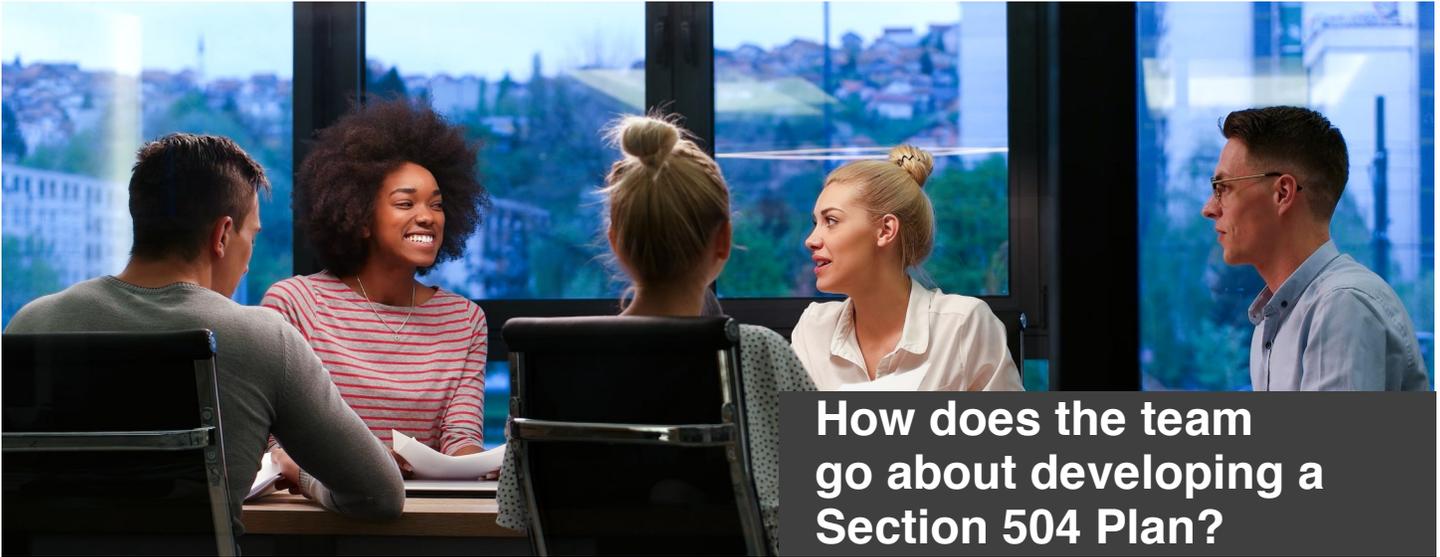
Regarding intervention strategies, your child may already be engaged in a response to intervention program (RTI), or the school district may suggest an intervention program during the evaluation discussion. An intervention program should not be used to deny or delay a full evaluation under Section 504 if the student is suspected of having a disability. An evaluation can be conducted simultaneously with intervention strategies, and the intervention strategies may be considered as part of the evaluation data.



What does an Evaluation for a Section 504 Plan entail?

The evaluation process under 504 is typically not as comprehensive as the evaluation process under IDEA 2004 for children who are pursuing an Individualized Education Program or IEP. However, the evaluation for

eligibility for a 504 Plan must include data from a VARIETY of sources and specifically evaluate areas impacted by the suspected disability. Aptitude and achievement tests, teacher recommendations, medical records, classroom observations, and parent and student interviews are areas that are frequently assessed or considered for 504 eligibility. The 504 evaluation must be administered by trained personnel and be tailored to assess specific areas of need. Specific areas of need may include things like speech processing, inability to concentrate, and behavioral concerns.



How does the team go about developing a Section 504 Plan?

How does a Section 504 team decide if a child is eligible for services?

After the evaluation is completed, the team must meet to consider the results. Although it is not “required,” it is reasonable to expect parents, and when possible, the student, to have a meaningful opportunity to participate as a member of the 504 team.

The team must review the data and answer two questions: Does the child have a physical or mental impairment? Does the impairment substantially limit one or more of the major life activities? If the answer to both questions is “yes,” then the child has a disability under Section 504.

The final point for the team to consider is whether the student needs Section 504 services in order to meet his/her educational needs as adequately as those of nondisabled peers. If the answer is “yes,” a 504 Plan is written. If there is no educational need, it would not be necessary to write a plan. The program cannot prevent access based on disability. Even if a plan is not needed, the child still is protected by the anti-discrimination aspects of the 504.

Under the ADA Amendment Act, the “ameliorative effects of mitigating measures” MUST NOT be considered when determining if an individual is substantially limited in a major life activity. This means that things like medication for a child with ADHD or a hearing aid for a child with a hearing impairment, that help to lessen the impacts of the disability, would not disqualify the student from Section 504.

The Section 504 plan is typically developed by the team and addresses the needs identified in the child’s evaluation to provide both physical and academic access. There is no “standard” 504 form; therefore, school districts are permitted to develop a form of their own. Although it is not even “required” that the plan be in writing, most school districts do develop written plans. The plan may include specially designed instruction, accommodations, and related aids and services.

Specially designed instruction means special education that includes content, approaches, and/or delivery of instruction designed to address a child’s *unique* needs. Although a disability that requires specially designed instruction is more frequently addressed through an IEP, it is permissible for specially designed instruction to be included as part of a Section 504 Plan. Examples of specially designed instruction may be a functional behavior plan for a child with ADHD or a social skills class for a child with social skills deficits.

Accommodations, on the other hand, are frequently included in a 504 plan and provide tools or procedures that provide a child equal access to instruction, although they do not change what the child learns. Some examples of accommodations are extended time on tests, preferential seating, written homework instructions, assistive listening devices, use of worksheets with large print,





speech-to-text software, pre-teaching new concepts, and providing classroom notes. The accommodations included in the 504 Plan are based on the individual needs identified in the evaluation. There are an endless number of accommodations that can be considered.

[“School Accommodation Ideas for Students who Receive Section 504 or Special Education Services”](#)

Related services are support services that a child with a disability may require in order to benefit from education.

Examples of related services are assistive technology,

interpreters, school health services and school nurse services, physical therapy, occupational therapy, speech and language services, and psychological and counselling services.

Whether a child needs specially designed instruction, accommodations, or just related services, it is important for the team to consider ALL areas of need when developing a 504 Plan. Examples of areas of need that may be considered in developing a 504 plan are assistive technology, accessibility issues, transportation, therapies, medical support and medication, physical education, academic needs, stamina, fire safety, and self-help skills.



What happens after the Plan is developed?

The last decision of the 504 team happens after the plan is written. The team must decide where the plan will be carried out or implemented. In making this decision, the team must consider the concept of least restrictive environment (LRE). LRE ensures that each student with a disability is educated with non-disabled students to the *maximum extent appropriate*. The team must FIRST consider the regular education classroom with supports, before considering a more restrictive placement on the continuum of alternate placement options.

The school district must comply with the plan as it is written, as there can be serious consequences, or

even sanctions, if a district is found to be out of compliance with a 504 Plan. Everyone at the school district who is responsible for implementing the plan must have access to it. This may even include cafeteria staff, transportation personnel, athletic





Can a student have both an IEP and a 504 Plan?

An IEP provides more specific protections than a Section 504 Plan, and a child on an IEP automatically has Section 504 protections. It is not necessary to pursue a separate 504 Plan if your child already has an IEP.



What happens after high school?

A student can use a Section 504 Plan to demonstrate a need for accommodations and supports in college. It is the student's responsibility to self-

disclose information about his disability and to request reasonable accommodations and modifications. Postsecondary institutions cannot deny admissions to students based on their disability, if they otherwise meet the college entrance requirements, and must ensure that students have an equal opportunity to participate through academic adjustments. Postsecondary institutions are not required to evaluate students suspected of having a disability. It is important to note that colleges are not required to provide FAPE.

Most colleges have offices of disability services that can help students with disabilities to understand the process of obtaining supports.



What can you do if you disagree with the 504 Plan that is developed?

If you disagree with the school district's decision about your child's education, you have several options. You may first elect to request a 504 team meeting to discuss your concerns.

You may also request a meeting with a mediator present to facilitate an agreement. Yet another option is to use the school district's grievance process.

If the area of concern is not resolved, a formal complaint can be filed with the Federal Office for Civil Rights (OCR). The OCR can order corrective action when violations are found.

A form for filing a complaint with OCR is available [click here](#).

After completing the form, it may be submitted online or via mail. Supporting documents may be submitted along with the complaint. With respect to a complaint that has been filed, OCR will complete their investigation within *180 calendar days* of the alleged discrimination taking place.

Finally, there is also the option of requesting a due process hearing before an impartial hearing officer (IHO). A due process hearing is a formal legal proceeding where evidence is presented, and witnesses may be called.

Where can you get further information and/or technical assistance about Section 504?



U.S. Department of Education's Office for Civil Rights.

Contact information for the Cleveland Regional Office is as follows:

Phone – 1-216-522-4970

(TTY) OR Federal Relay Service (FedRelay) at 1-800-877-8338

[OCR Office for Civil Rights](#)

[To view the Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools:](#)

In closing, Section 504 Plans are based on a civil rights statute that requires schools to provide the same access to students with disabilities as they do to students without disabilities. A 504 Plan can help to ensure equal access by removing barriers and creating a level playing field. If you suspect your child is struggling as a result of a disability and/or is the victim of disability-based discrimination, consider submitting a letter to the school district requesting an evaluation to determine eligibility and protections under Section 504.



References

Parent and Educator Resource Guide to Section 504 in Public, Elementary, and Secondary Schools, U.S. Department of Education, Office of Civil Rights, December 2016

Students with ADHD and Section 504: A Resource Guide, U.S. Department of Education, Office of Civil Rights, July 2016

Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children of Children with Disabilities (last modified Oct. 2015)

Questions and Answers on the ADA Amendments Act of 2008 and Students with Disabilities Attending Public Elementary and Secondary Schools (January 19, 2012)

Florida Department of Education online introductory course to Section 504 of the Rehabilitation Act of 1973, sss.usf.edu, copyright 2015



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OHIO COALITION FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

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OHIO COALITION FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

The Ohio Coalition for the Education of Children with Disabilities (OCECD) is a statewide nonprofit organization that serves families of infants, toddlers, children and youth with disabilities in Ohio, educators and agencies who provide services to them. OCECD works through the coalition efforts of over 35 parent and professional disability organizations and over 70 individual members which comprise the Coalition. OCECD has also been funded since 1984 to serve as the Parent Training and Information Center (PTI) for the state of Ohio from the federal government, U.S. Dept of Education, Office for Special Education Programs.

Established in 1972, currently employing 28 staff in 15 offices who are primarily parents or family members of children or adults with disabilities or persons with disabilities, the Coalition's mission is to ensure that every Ohio child with special needs receives a free, appropriate, public education in the least restrictive environment to enable that child to reach his/her highest potential. Throughout Ohio, the Coalition's services reach families of children and youth, birth through 26 years of age, with all disabilities.



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