

Section 504 for Secondary Counselors

Background and Purpose of Section 504

- Comes from the Rehabilitation Act of 1973, addressed failure of public schools to educate students with disabilities.
- Civil Rights Law, **provides protection against discrimination for individuals with disabilities.**
- Designed to provide **equal access** and fairness in general education to students with disabilities, thereby **leveling the playing field through appropriate classroom accommodations** (Section 504 Accommodation Plan).
- Section 504 also requires that eligible students are afforded an equal opportunity to participate in school extracurricular and nonacademic activities.
- Americans with Disabilities Act (ADA) sister statute, amended in 2008, expanded eligibility.
- Enforced by the U.S. Department of Education, Office of Civil Rights (OCR).

District Requirements

- This is not an optional program.
- **Districts must have a process in place by which disabled children are identified, evaluated, and placed in accordance with their educational needs so that they have equal opportunity to benefit from the school's academic and nonacademic activities.**
- Districts required to provide **Free Appropriate Public Education (FAPE)** to each qualified person with a disability who is in the school district's jurisdiction.
- Education must meet individual needs.
- Students with disabilities must be educated with nondisabled students to the maximum extent appropriate for the student with a disability.
- Evaluation and placement decisions must be made in accord with appropriate procedures.
- Parent/guardian must receive information regarding the school's legal duties under Section 504, as well as their rights under the law.
- **Child Find** notice that the school does not discriminate on the basis of disability (by posting of notices, newspaper listings, and notice in school publications and/or website) and **duty to locate and identify potentially eligible students.**
- **Compliance with the procedural safeguards of Section 504** with respect to notice to parents, opportunity to examine relevant records, right to a due process hearing, right to a review of a due process hearing decision.
- **Districts must create or adapt forms to document the district's Section 504 process including:**
 - Internal referral form
 - Parent Consent form
 - Notice of Parent Rights
 - Report of Evaluation/Meeting
 - Individual Accommodation Plan
- Districts must designate an employee to coordinate compliance with Section 504.
- Districts must form a Section 504 Committee that is a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement and accommodation options. Parent involvement is not required but is best practice.

Student Eligibility

- An eligible Section 504 student is one with **(1) “a physical or mental impairment (2) which substantially limits (3) one or more major life activity.”**
- Physical or mental impairment (that substantially limits a major life activity) list non-exhaustive.
- Major life activities, as defined in the Section 504 regulations at 34 C.F.R.104.3(j)(2)(ii), including functions such as **caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.** This list is non-exhaustive. Other function can be major life activities for the purpose of Section 504. In the Amendments Act, Congress provided additional examples 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 **functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.** The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid- the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.
- Substantial limitation has no clear definition but may use comparison of a person of the same age.
- The determination of whether an impairment substantially limits a major life activity shall be made **without regard to the effects of mitigating measures** such as medication, equipment, appliances, prosthetics, hearing aids and cochlear implants or other hearing devices, mobility devices, oxygen therapy equipment and supplies, assistive technology, reasonable accommodations or auxiliary aids or services, learned behavioral or adaptive neurological modifications. Under the 2009 ADAA, students are disabled under Section 504 if they have a physical or mental impairment that would substantially limit them in a major life activity if they were not taking advantage of mitigating measures.

Section 504 Identification/Evaluation Process

- If the school has reason to suspect that because of a disability, a student needs accommodations in the general educational environment in order to have equally effective participation in the school program, then the school must **notify the parent** of the need for an individual evaluation and **evaluate the student.**
- Written consent for initial evaluation and initial placement is required.
- Evaluation does not necessarily mean test. **Formal testing is not required** to determine eligibility except with a learning disability like dyslexia. When interpreting evaluation data and making placement decisions, the District is required to “**draw upon information from a variety of sources,**” both formal and informal.
- **Best practice= Parent participation** should always be encouraged throughout the Section 504 process.

Developing and Reviewing a Section 504 Plan/Accommodations

- Committee reviews student’s data and needs in order to develop an individual accommodation plan.
- Plan should reflect the unique needs of the student and relate directly to the impact of the individual’s impairment.
- Section 504 plan including accommodations and placement must be written specifically, avoiding phrases that are left up to individuals to interpret.
- Section 504 plan including accommodations and placement are legal documents and must be followed.
- **Plan must be reviewed annually or before then if there is a need.**

Red Flags that may trigger a Section 504 Evaluation

- When a disability of any kind is known or suspected.
- When a student is evaluated and does not qualify for special education services.
- When a student shows a pattern of not benefiting from research-based instruction.
- When a student exhibits a chronic health condition or has a health plan.
- When retention is being considered for any student.
- When a student has been identified or is suspected of having ADD/ADHD.

****Unlike IDEA, Section 504 requirements come without any funds!**