

Students' Rights

Section 504 and Students with Disabilities

Every student with a disability is protected from discrimination under federal law—**Section 504** of the Rehabilitation Act of 1973. This law prohibits *discrimination based on disability* in any program or activity that receives funding from the federal government. All Washington state public schools must comply with this federal law.

Section 504 requires public schools to provide a "free appropriate public education" (FAPE) to every student with a disability—regardless of the nature or severity of the disability. Under Section 504, schools must provide students with disabilities the accommodations, aids, and services they need to **access and benefit from education equally with their peers**.

What is a Disability under Section 504?

Section 504 defines disability as a physical or mental impairment which *substantially limits* one or more *major life activities*. This definition of disability should be interpreted broadly.

Major life activities are activities that are important to most people's daily lives. Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, bending, reading, concentrating, thinking, and communicating are some examples of major life activities. Major life activities also include major bodily functions, such as functions of the digestive, bowel, bladder, brain, circulatory, reproductive, neurological, or respiratory systems.

Substantially limits should also be interpreted broadly. A student's impairment does not need to prevent, or severely or significantly restrict, a major life activity to be substantially limiting.

Evaluate Disability without Mitigating Measures

Mitigating measures cannot be considered when evaluating whether or not a student has a *substantially limiting* impairment. Mitigating measures could include medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications a student uses to eliminate or reduce the effects of an impairment.

An impairment that is **episodic or in remission** remains a disability if, when in an active phase, this impairment substantially limits a major life activity.

How Do I Get Accommodations for My Child?

Public schools must provide appropriate accommodations, aids, and services to eligible students who need these accommodations to participate in, and benefit from, their education. This includes all programs and activities sponsored by the school, such as sports and field trips. These accommodations, aids, and services are described in a 504 plan.

Students who are entitled to a 504 plan **(1)** have a physical or mental impairment which substantially limits one or more major life activities, and **(2)** need accommodations, aids, or services—*because of their disability*—so they can access and benefit from their education.

To determine whether or not a student needs a 504 plan, the school must follow these three steps: refer, bring a 504 team together, and evaluate.



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Parents Have Rights Under Section 504. The school must give parents a copy of their rights, called *Procedural Safeguards*, before anyone takes the first step toward evaluating a student or developing a 504 plan.

1. Request a Referral for Evaluation

Anyone, including a parent or guardian, can refer a student for evaluation. A Section 504 referral should be in writing and ask that the school evaluate whether or not a student has a disability and needs accommodations, aids, and services. Schools have a special responsibility to make a Section 504 referral for every student they know or suspect has a disability and may need accommodations, aids, or services.

2. School Brings a 504 Team Together

The individual needs of the student determine who joins the 504 team. There are three core members of any 504 team:

- Someone who knows the student—for example, a parent, teacher, physician, nurse, or counselor. While parents are not required to join the 504 team, the participation of a parent can be incredibly valuable.
- Someone who can analyze and interpret the evaluation data.
- Someone who is knowledgeable about placement options at the school.

The 504 team will determine if a student is eligible and will decide what accommodations, aids, or services should be in place to **reduce or eliminate** the impact of the student's disability on his or her education.

3. 504 Team Evaluates

First, the 504 team gathers and analyzes data about the student's condition. Evaluation data should come from a variety of sources. Grades, test scores, attendance, health room visits, parent and student input, teacher observations, medical or psychological evaluations, special education data, and medical information are just a few examples.

The 504 team should collect data that answers these two questions:

1. Does the student have a physical or mental impairment which substantially limits one or more major life activity?
2. If so, what accommodations, aids, and services—if any—does the student need to access and benefit from their education?

The school must have **consent from a parent or guardian** before the evaluation begins. Without consent, a 504 team cannot evaluate a student or continue the 504 process.



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Evaluation and the Role of a Medical Diagnosis

There are three important ideas parents should understand about a medical diagnosis:

- A school cannot require a parent to provide a medical diagnosis to evaluate a student. However, a diagnosis can provide very helpful information for the 504 team.
- The school could request a medical evaluation, at no cost to the parent, if the 504 team needs medical information to make a decision.
- A medical diagnosis does not always mean that a student needs a 504 plan. Doctors cannot *prescribe* a 504 plan—only the 504 team can make that decision. However, the 504 team must consider the information a doctor provides when evaluating a student.

4. 504 Team Creates a Plan. School Puts the Plan Into Action.

If the evaluation indicates that the *student has a physical or mental impairment which substantially limits one or more major life activity*, the team determines whether or not the student needs a 504 plan.

The plan describes the accommodations, aids, and services the school must provide to make sure the student can experience a free and appropriate public education, as the law requires.

The school must have **consent from a parent or guardian** before staff take action on the 504 plan. Schools must give parents a copy of their *Section 504 Procedural Safeguards* at this point.

With the 504 plan in place, all school staff members follow the plan to accommodate the student. It is the school's responsibility—not the student's or parent's—to make sure teachers are aware of the services, aids, or accommodations in the plan.

Teachers should consult the district's **Section 504 coordinator** if they need help or clarification on what to do for the student.

5. School Reviews and Evaluates the 504 Plan

Every year, the school should review the 504 plan to make sure it continues to address the student's needs. However, a parent or teacher could ask for a review at any time if they think the plan is not meeting the student's needs.

Periodically, the 504 team must re-evaluate the student's eligibility for Section 504 and the accommodations, aids, or services in the 504 plan. This re-evaluation should take place at least once every three years, but can happen more frequently; it depends on the student's needs.



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Discipline and Section 504

Before a school disciplines a student with a disability, especially if it involves a suspension or expulsion, the school must determine if there is a need for a special meeting called a *manifestation determination*. In this meeting, the 504 team decides whether or not there is a relationship between the student's disability or 504 plan, and the student's behavior that led to the disciplinary action.

The 504 team must hold a manifestation determination meeting before a student with a disability is suspended or expelled for:

- More than **ten consecutive** school days, **OR**
- More than a **total of ten school days** during a school year, which could indicate a *pattern of removal*.

There are two questions the 504 team must answer at a manifestation determination meeting:

1. Was this behavior caused by, or did it have a direct and substantial relationship to, the student's disability?
2. Was this behavior the direct result of the school's failure to follow the student's Section 504 plan?

If the **answer is yes** to either question, the behavior is a manifestation of the student's disability and the student can remain in school. The 504 team should review the student's 504 plan and modify if necessary.

If the **answer is no** to both questions, the school can discipline the student in the same way it would discipline a student who does not have a disability.

Discriminatory Harassment

Harassment based on disability is a form of discrimination prohibited in Washington public schools. Schools must take steps to protect students from discriminatory harassment.

School staff must investigate possible discriminatory harassment—as soon as they know, or reasonably should know—even if a parent or student does not file a formal complaint.

If an investigation reveals that harassing conduct created a hostile environment, staff must act quickly to stop the behavior and put an end to the hostile environment.

The school must:

1. Address any effects discriminatory harassment had on the student at school, **AND**
2. Make sure that harassing conduct does not happen again.

Find more information about discriminatory harassment, guidelines for district policy and practice, and related resources, **see www.k12.wa.us/Equity**.



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Resolve Concerns or Disagreements

A discussion with your school principal, or Section 504 coordinator at the school district, is often the best first step to address your concerns or disagreements about discrimination and work toward a solution.

- **Focus on the facts** related to discrimination and harassment, as you understand them, AND
- Let the principal or coordinator know **what you want them to do to resolve the problem**

Find contact information for your district's Section 504 coordinator here, www.k12.wa.us/Equity/ContactList.aspx. You also have the option to file a formal complaint.

Formal Complaints — Discrimination and Discriminatory Harassment

If you believe the school is not following your child's Section 504 plan or your child is experiencing discrimination or harassment, you can file a formal complaint.

- On the **Equity and Civil Rights** website, www.k12.wa.us/Equity/Families, find information about how to file a formal complaint and follow the steps.
- Contact the U.S. Department of Education, **Office for Civil Rights** at 206-607-1600 (TDD: 1-800-877-8339), or visit the website, www.ed.gov/ocr.
- Contact the **Washington State Human Rights Commission** at 1-800-233-3247 (TTY: 1-800-300-7525), or visit the website, www.hum.wa.gov.

Learn More. Ask Questions. Get Help.

Equity and Civil Rights at the Office of Superintendent of Public Instruction

360-725-6162 | TTY: 360-664-3631 | equity@k12.wa.us | www.k12.wa.us/equity

For the Section 504 Coordinator in your school district, visit:

www.k12.wa.us/Equity/ContactList.aspx

Find more information about discrimination and harassment based on disability, guidelines for district policy and practice, and related resources, **see www.k12.wa.us/Equity**.

This document outlines rights and responsibilities under state and federal civil rights laws. You may have additional rights under other laws. This information is for informational purposes only—not to provide legal advice. For legal advice specific to the facts and circumstances of your individual situation, please contact an attorney.

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