

UNDERSTANDING SECTION 504 PLANS

Purpose: To eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Dep't of Education. Direct or indirect receipt of federal financial assistance.

Who is a Student with a Disability under Section 504? When does Section 504 apply?

The individual has a **MENTAL OR PHYSICAL IMPAIRMENT** which **SUBSTANTIALLY LIMITS** a **MAJOR LIFE ACTIVITY**.

What does “substantially limit” mean? Adopting the ADA standard, a disabled person under Section 504 is unable to perform a major life activity that the average person in the general population can perform. The restriction may relate to the condition, manner or duration under which the individual can perform the major life activity, compared to an average member of the public.

Example: Walking is a major life activity.

A person who is paralyzed and requires a wheelchair for mobility is a disabled person under Section 504.

A person who is able to walk only a short distance, or falls repeatedly would also qualify as a disabled person under Section 504.

What is a Major Life Activity?

A Major Life Activity is one of the basic activities that the average person in the general population can do with little or no difficulty.

If the person's condition does not substantially limit a major life activity, the person does not qualify for services under Section 504.

Major Life Activity – Examples include: caring for one's self, walking, seeing, speaking, learning, hearing, breathing, working, and reading.

Major Life Activities are **not microskills** – decoding, auditory processing, poor handwriting, solving algebraic equations, remembering chemistry formulas.

Cases have dealt with some interesting issues – walking is a major life activity. However, running on a daily basis as a track team member is not a major life activity.

Typically, Section 504 Plans for students relate to chronic health concerns or conditions:

NOTE *** Section 504 plans are not exclusive – students may also have an individualized health or nursing plans,

Recent evolution of the law permits the consideration of **mitigating factors**, such as eyeglasses, contacts, hearing aids, medication. If the symptomatology is substantially reduced, the student may not be eligible for Section 504 accommodations.

Some examples:

ADHD Significant impact on attention, organization, concentration, study skills?
What if the symptoms are well controlled on medication?

If so, no eligibility if the medication is effective and there is no substantial limitation on learning.

If student is demonstrating average to above average performance, there is not a substantial impact on learning: A grade of C is average. A's and B's are above average.

If student requires accommodations that are easily available to any student or can be addressed in a RTI plan (i.e. preferential seating, take a break, some extra time) then a 504 is not warranted.

Asthma Is the wheezing and shortness of breath well controlled with use of
inhaler?

If the student used one dose of the inhaler – eliminated the breathing problems, then the student was able to return to normal classroom activities, there would be no eligibility.

Diabetes Monitoring snacks and blood sugar.

Need for school nurse on duty in building.
Student too young to reliably test own blood sugar.
Who can administer insulin pump?

Allergies

Does school environment impact the student's ability to attend school or jeopardize his/her health?
Daily cleaning with special products? Use of filters? Minimize student's exposure to trigger substances?
Emergency plan – including emergency medication plan? Special training for staff, nurse, teachers, coaches – Epi pens? Monitoring of snacks, foods served in cafeteria?

Learning Disabilities Consider whether it is a broad category (learning) which is impaired versus a microskill.

If learning is severely impacted and has not responded to interventions, then the educational team may refer for possible special education eligibility.

What about students making A's and B's but whose parents do not feel they are reaching their potential?

OCR has found that a child was not eligible for Section 504 despite being diagnosed with a disability and earning A's and B's in his classes. (Jefferson Parish (La) Public Schools, 16 EHLR 755 (OCR 1990). When a disabled child is being educated in the regular classroom, the achievement of passing grades and advancement from grade to grade will be important factors in determining whether the student is deriving educational benefit.

By definition, the student who is successful in regular education does not have a disability which substantially limits his ability to learn and that student would not be eligible for Section 504.

Medication-Only

If a student requires medication to be administered at school, but has no other needs which impact his/her learning, and then the student need not be placed on a Section 504 plan. The administration medication is a related service provided by regular education.

The educational team/504 team will determine whether the student is eligible for FAPE under Section 504. The student may need to be evaluated by the school district in order to assist in determining initial eligibility/continued eligibility or to make significant changes in the plan.

The Section 504 Service Plan should be reviewed on an annual basis. Further, a re-evaluation of the student should occur at least every three years and before any change in placement including exiting.

The school district may proceed with eligibility determination and changes in the 504 Plan following notice to the parent/guardian. Parent consent is not required for a change in placement pursuant to Section 504.

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