



## **SECTION 504 QUESTIONS AND ANSWERS**

### **What is Section 504?**

The statute was intended to prevent intentional or unintentional discrimination against persons with disabilities, persons who are believed to have, are regarded as having, or have a record of having disabilities. Section 504 was enacted to “level the playing field” – to eliminate impediments to full participation by persons with disabilities. The U.S. Department of Education Office of Civil Rights (OCR) regulations recognize that, in order to provide individuals with disabilities the same opportunities as others, it may be necessary to provide additional services.

This legislation protects the civil rights of people with disabilities, i.e., physical or mental impairments that substantially limit one or more major life activities. It prohibits organizations that receive federal funds from discriminating against otherwise qualified individuals on the sole basis of a disability. Section 504 of the Rehabilitation Act of 1973 is enforced OCR under their regulatory guidelines. Title II of the ADA and the related Amendments Act (ADAAA), applicable to all public educational institutions, provide comparable protections.

### **How does Section 504 define “disability?”**

Under Section 504, a person is considered a person with a disability if they meet one of the following criteria:

1. Has a physical or mental impairment, which substantially limits one or more major life activities,
2. Has a record of such an impairment, or
3. Is regarded as having such impairment.

Note: Criteria 2 and 3 do not prompt the school district’s obligation to provide a free appropriate public education (FAPE). Consequently, the district has no duty to identify, assess, or place students who qualify only under these criteria.

The term “disability” includes a broad range of disabilities and impairments; as such, there is no exhaustive list. Additionally, determination in favor of a disability should not demand extensive analysis.

### **What is a “physical or mental impairment?”**

The regulations of Section 504 define the terms as:

- a) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic; skin; and endocrine; or
- b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, attention deficit disorder, and specific learning disability.

### **What is a “substantial limitation”?**

Neither Section 504 nor its regulations define the term “substantial limitation.” OCR has ruled that the phrase is to be defined by the school district consistent with the intent and language of the ADAAA. The ADAAA clarifies that the definition of “substantial limitation,” and all aspects of the definition of “disability,” should be construed in favor of broad coverage; that “substantial limitation” should be interpreted broadly.

## **What is a “major life activity?”**

Major life activity means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, concentrating, reading or thinking. This list is not exhaustive. The term includes those basic activities that the average person in the general population can perform with little or no difficulty. A number of bodily functions are considered major life activities, such as functions of the immune system, digestion, neurological functions, respiratory functions, and brain functions.

Major life activities include, but are not limited to, functions such as:

Caring for oneself	Walking	Learning
Performing manual tasks	Standing	Reading
Seeing	Lifting	Concentrating
Hearing	Bending	Thinking
Eating	Speaking	Communicating
Sleeping	Breathing	Working

## **How does the ADA, Amendments Act (ADAAA) affect the Section 504 eligibility process?**

The ADAAA addresses the “substantial limitation” aspects of Section 504 eligibility. Congress directed that the definition of disability should be interpreted and applied broadly. This list of impairments is not exhaustive. Specifically, the Act directs the following:

- An impairment need not severely or significantly restrict a major life activity to be considered substantially limiting – i.e., interpret the term broadly.
- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- The determination of whether an impairment substantially limits a major life activity should be made without regard to the ameliorative effects of mitigating measures, such as medication, hearing aids, etc. Furthermore, the eligibility committee cannot consider the use of assistive technology, reasonable accommodations, auxiliary aids or services, or learned behavioral or adaptive neurological modifications. Ordinary eyeglasses and contact lenses are not included in this provision.

## **What is a Section 504 Plan?**

A Section 504 Plan is designed by the Section 504 Committee to provide reasonable accommodations to enable an eligible student to access the school related activities and programs. In contrast, students receiving special education and related program through an IEP are not provided a Section 504 Plan because the IEP should address the student’s accessibility needs and other Section 504 protections, and therefore, satisfies the district’s obligations under Section 504.

## **What is the Section 504 Committee?**

Each school has a committee which is knowledgeable about the requirements of Section 504 and which operates under the direction of the building principal. When the committee makes decisions particular to an individual student, persons who are knowledgeable about the student, who have expertise in the areas of suspected impairment, and who have expertise in interpreting data, are added as members. The membership may consist of the Section 504 Chairperson, the child’s general education teacher, and specialists or other personnel deemed appropriate by the Section 504 Chairperson. The committee’s purpose is to process

referrals, to review assessment information, determine eligibility, and to develop Section 504 Plans for the students under Section 504, when supported by data.

### **When is the student eligible under Section 504?**

The decision regarding whether or not a student is eligible under Section 504 is made on a case-by-case basis. The Section 504 Committee reviews each student's individual information to determine whether there is a physical or mental impairment that substantially limits a major life activity. The committee considers the nature and severity of the impairment, its duration or expected duration, and the long-term impact of the impairment on the student's opportunity to access and benefit from programs and activities offered by ACPS. If the student is eligible under the Individuals with Disabilities Education Act (IDEA), the student meets the eligibility requirements under Section 504; however, the student's IEP satisfies the district's Section 504 obligations.

### **Does Section 504 require assessments?**

Yes. An "evaluation" does not necessarily mean a "test" or "formal testing." Rather, under Section 504 it refers to gathering data and/or information from a variety of sources so that the Section 504 Committee can make the required determinations. Common sources of evaluation data are grades, disciplinary referrals, health information, standardized test scores, teacher comments, observations, previous eligibility components, medical reports, etc. If individually administered, formal testing is pursued, parental consent is required.

### **What about private psychological or psycho-educational diagnoses and evaluations?**

Occasionally, parents/guardians consult with professionals outside of the school system prior to bringing their concerns to the attention of staff. In these instances, the individual school should assist and facilitate the receipt of this information into the appropriate referral process (e.g., IAT, Section 504 Screening or Student Study Committee).

Eligibility determinations (for Section 504 or IDEA) are not made solely on the basis of information collected in private evaluations. Rather, the information provided should be reviewed by the appropriately qualified school staff who will assist the Section 504 or Child Study in determining what additional information, if any, is needed. All information provided by parents/guardians should be considered along with a variety of other sources of data. Moreover, while any recommendations contained in private evaluations should be considered by the committee, determinations of eligibility, accommodations, and services are made solely by the 504 Committee or Child Study/Eligibility Team.

### **Do teachers submit information for teams to consider as part of the Section 504 process?**

For Section 504 screenings and re-evaluations, teachers are asked to complete a teacher report form (504-T). This information is requested from a student's teachers prior to the meeting and supports the team with necessary classroom based information about a student's academic, behavioral or other functioning. Teachers are to submit their reports three to four days in advance of the meeting.

### **Can parents receive copies of the teacher reports in advance of the meeting?**

If requested, parents may receive copies of completed teacher report forms (504T) in advance of the Section 504 screening or re-evaluation meeting.

## **What role do classroom interventions play in the assessment process?**

When a student is having difficulties participating in some aspect of the academic program, it may often be appropriate to implement short-term classroom interventions. If these interventions significantly reduce or eliminate the difficulties, then a referral based on suspicion of a disability is likely not necessary. Conversely, if the student continues to struggle or requires the continual implementation of interventions over time, it is appropriate to refer the student to either the Section 504 Committee or Child Study Team for evaluation and determination of eligibility.

Additionally, if any information exists (such as information provided by a parent/guardian) that suggests the suspicion of a disability, the student should be promptly referred for consideration under either Section 504 or IDEA. Schools should avoid using the Multi-Tiered Systems of Support (MTSS) process, Student Support Team (SST), or informal interventions for prolonged periods due to risk of delaying the identification of a student with a disability.

## **Can a student with a temporary impairment be eligible for programs under Section 504?**

Yes. The U.S. Department of Education has determined that a temporary impairment that substantially limits a major life activity can constitute an impairment under certain circumstances such that Section 504 services might be required. The proper inquiry is not “whether the impairment is temporary or permanent” but instead “whether the impairment will have a considerable and long-term impact” on the student’s education. In some cases, a non-permanent impairment may have a significant impact on a student’s education. This should be determined on a case-by-case basis. However, as a general matter, a broken arm that will heal in the normal 6 week period should not be considered an impairment.

## **What are “mitigating measures” and how do they affect the 504 process?**

**Mitigating measures defined:** Mitigating measures include interventions such as medication, hearing aids, or other devices or practices which serve the purpose of reducing the impact of the identified condition. The positive effects of MTSS/SST or informal interventions fall within this category. They also include learned behavioral or adaptive neurological modifications. Exceptions to the mitigating measures rule are ordinary glasses and contact lenses. Students who use these latter devices to successfully correct their vision may be found ineligible under Section 504 if they have no other identifiable needs.

**Mitigating measures and eligibility:** Schools may not consider the effects of mitigating measures when determining the existence of a potentially disabling condition. Committees must examine the degree of limitation on a major life activity, estimating the impact of the disabling condition as if the mitigating measure were not in effect. In many instances, it may be helpful to review the student’s records to estimate his or her functioning prior to the onset of medication or other mitigating measure.

**Mitigating measures and plan development:** A student may be determined to have a disabling condition and be considered eligible for the non-discrimination protections of Section 504, but may not necessarily require accommodations or services in order to have equal educational opportunity. Although committees may not consider mitigating measures in determining the existence of a disability, they may consider the effects of mitigating measures when determining the need for a Section 504 plan. Thus, students with disabilities may qualify for the nondiscriminatory protections provided by Section 504, but may not require an accommodation plan if there are mitigating measures which sufficiently lessen (ameliorate) the effects of the disability. Section 504 Committees should reconvene at least annually to discuss these students.

## **How are Accommodations and Modifications Different?**

Students eligible for Section 504 may also be eligible for accommodations and services. Unlike modifications, which typically occur for students with IEPs and involve changes to the curriculum, accommodations provide adjustments to how things are done. Services are those things that are added to accommodate the effects of a disability (e.g., transportation for a student in a wheelchair).

Accommodations are provisions made in how a student accesses/demonstrates learning. Accommodations provide students with equal access to learning, provide students with equal opportunities to demonstrate what they know, are based on individual strengths, and may vary in intensity and degree. Accommodations do not substantially change instructional level or content.

Modifications are changes in what a student is expected to learn and demonstrate, and may include specialized instruction. Modifications provide for changes in the instructional level or benchmark, changes in the number of key concepts mastered within a benchmark or unit of study, and changes in content/curriculum.

## **What are some common accommodations or services under Section 504?**

Depending on the nature of the disability, a student covered by Section 504 might need testing accommodations (e.g., extra time on tests and/or a reduced-distraction environment in which to take them), extra time on homework assignments, preferential seating, note taking assistance, written instructions for homework, assignments broken into smaller tasks, adaptive technology and classroom equipment (e.g., tablets word processors), textbooks and other written material in alternate formats, extra time to get to classes, or services such as sign language interpreters, transportation, or health-related services. Accommodations and services are intended to give the student an equal opportunity to participate in the general education program. If a student requires a modified or reduced curriculum or other specialized instruction considered by the district to be special education, then the student should be served under an IEP.

## **What if all the students in the class are receiving accommodations?**

A teacher might decide to give all the students in a class extra time on tests or other assistance that might otherwise be considered an accommodation or service under Section 504. Nevertheless, if an eligible student in the class requires the aid or service because of a disability, that aid or service should be included in a Section 504 Plan regardless of how other students are treated. This should ensure consistency in the continued delivery of the services and provide the parents/guardians with due process protections should the classroom teacher or the district decide to change or eliminate the previously provided accommodations or services that were provided to all students.

## **How are students' needs related to medical diagnoses addressed? What are "care plans," "individual health plans," and "health alerts"? How are they different from 504 Plans?**

Students with health conditions sometimes require a treatment or emergency plan to be implemented in the school setting. School nurses work with parents/guardians and school staff to ensure that the medical needs of such students are met. A document that reflects the student's medical needs is developed by the school nurse in conjunction with parents/guardians, physicians or other appropriate service providers, teachers, school administrators, and other school staff pertinent to the concerns (such as cafeteria workers). Such document, frequently called an "individual health plan," "health alert," or similarly worded document, is maintained in the student's health records and is shared with school staff who interact with the student, with parental permission, on an as-needed basis. Many students with asthma, diabetes, allergies or other conditions have such plans. If at any time, a student with an individual health plan or health alert is thought to

require accommodations or services beyond those provided through the document, (s)he should be referred to the Section 504 Committee.

Students with medical conditions that are considered to be potentially life-threatening, even if well-managed by medication or in remission, are candidates for screening by the school-based Section 504 Committee. These students may be referred for screening, regardless of their academic functioning, and parents/guardians should be informed of their rights under Section 504. Examples of this include students with diabetes, severe asthma, severe allergies, auto-immune disorders, etc.

Furthermore, a student's health issues, even when not life-threatening, may have an academic impact or may affect the student's ability to participate in classroom or other school activities. In such cases, a 504 committee may need to develop a more extensive 504 accommodation plan so that classroom teachers can make allowances, or adjustments, to their classroom or their instruction. The existence of a health condition, in and of itself, does not necessitate the development of a 504 plan. However, under Section 504, a student with an individual health plan is entitled to all of the non-discriminatory protections of the statute.

Parents/guardians of students with individual health plans and health alerts should be informed of the referral process and their rights under Section 504 by the school nurse. Likewise, any staff member who is aware of a student with a health condition that could be a disability under Section 504 may refer the student to the 504 Committee for screening. If there are attendance issues related to illness or treatment, and/or difficulties participating in school activities (academic or extra-curricular) due to poor physical stamina, limited strength, or impaired mobility, students should be referred for screening.

Students who have dietary restrictions due to religious reasons or parental preference may have a health alert or similar documentation provided to staff by the clinic. However, such a communication is not a 504 Plan and does not provide the student with the same procedural protections as a 504 Plan.

### **What about students who are diagnosed with psychiatric conditions?**

Schools must be vigilant and thorough when considering student eligibility due to disabilities. For students who are diagnosed with psychiatric conditions, particular care must be undertaken to consider their school-related needs. Some of these students have strong academic histories, but also experience significant difficulties attending and participating in school due to psychiatric conditions and/or treatment thereof. School staff must be open to considering whether the student should be evaluated for special education due to their emotional needs. Many times, students whose psychiatric condition has resulted in his/her hospitalization may require more than an accommodation plan in order to receive a free appropriate public education (FAPE). They may require case management, modification/reduction of assignments, modified school day, and special placement during the school day in order to sustain their academic progress or otherwise participate in school activities. Such services are delivered through special education identification under the IDEA, if the student qualifies. However, if the student can participate in the general education curriculum with services and accommodations, the student should be referred to the school-based Section 504 committee.

Occasionally a student experiences a significant psychiatric event and is diagnosed with a condition, but then responds readily to treatments. Students who seem to be well on the path of recovery, who are developing coping skills, and who are able to begin to be self-advocates may be good candidates for Section 504 plans as they return to full participation in school. However, care must be taken so that Section 504 eligibility is not inadvertently used to delay potential special education services. If the Section 504 Committee wishes to refer the child to the Child Study Team, the child can be served under Section 504 while the Child Study process is pending.

### **Can a student be exited from Section 504?**

Yes. Once a student no longer meets eligibility requirements, the Section 504 Committee may exit the student from the Section 504 Program with notice of procedural safeguards to the parents/guardians and Written Notice. This decision must include a reevaluation, which may consist of a review of existing information by the Section 504 Committee.

### **What about a child who could get straight A's if s(he) had a Section 504 Plan?**

While there may be a genuine belief that the student is not performing at his/her potential, perceived underachievement is not, in itself, sufficient reason for eligibility. There must be some reason to believe that the student has a physical or mental impairment that substantially limits a major life activity. The 504 committee is charged with examining the overall functioning of a child in areas such as behavior, attendance, academics, and concentration, among others. Grades should not be the only evidence of lack of educational benefit, nor should good grades be considered enough to show that a student doesn't have a disability. Activities both academic and nonacademic should be considered when determining eligibility.

### **Can a student have a disability under Section 504 if (s)he is doing well academically?**

Yes. A student might be getting good grades and otherwise be doing reasonably well in class despite his/her disability. The student may only be doing well because of the extraordinary effort and time (s)he spends on schoolwork or an unusual amount of help provided by his parents/guardians. For instance, while most of the students in the class might spend an hour on homework each night, the student might be keeping up only by spending considerably more time. If there is information indicating that this might be due to a disability, then the student should not be penalized for his/her extra effort and should be screened for potential further action under Section 504 or IDEA.

### **If a student has a Section 504 Plan, are accommodations for state standardized testing provided?**

If a student is scheduled to take one of the standardized state assessments such as the Standards of Learning assessments and the student has testing accommodations listed on the Section 504 Plan as part of the general education instructional program, then accommodations for the state assessment programs should be considered by the Section 504 Committee. Testing accommodations are only provided to give the student an equal opportunity to demonstrate achievement, not an increased advantage to obtain a better score.

### **What if a parent/guardian refuses testing accommodations?**

If the school recommends that testing accommodations be included, but the parent/guardian refuses, then it should be requested that the parent provide (preferably in writing) a statement that (s)he is declining testing accommodations and that (s)he understands the possible implications for his/her child. These might include the student's ability to earn a standard or advanced diploma.

### **Can the Section 504 Committee ensure accommodations to ACT/SAT/AP exams?**

No. If a student is qualified under Section 504 and the Section 504 Plan lists testing accommodations as part of the general education instructional program, parents/guardians can request that a school release information to the testing program that governs the ACT/SAT/AP or other such exams. The testing organization will make an independent determination of whether modifications to college entrance/credit exams will be allowed. If there is a requirement for assessment data, it is the responsibility of parents/guardians to obtain that data. ACPS holds no responsibility to provide assessments in order for students to apply for accommodations on tests administered by other entities.

Understandably, a student who receives testing with accommodations in the school setting seems a more likely candidate to receive modifications on college entrance/credit exams. Likewise, the longer the student has received such accommodations, the more likely s(he) is to receive them on the entrance/credit exam. However, as previously stated, the testing organization makes all final decisions regarding accommodations on their exams.

**Do Section 504 Plans transfer from a K-12 school system to college?**

No. Colleges and other postsecondary institutions do not automatically accept Section 504 plans from K-12 schools. Contact the college or university of interest to learn about how they support students with disabilities. Many schools have an office of student support to assist the student.

**Is there a formal transition process under Section 504 for students who are graduating?**

While there is no provision under Section 504 outlining a transition process for graduating students, school teams and/or parents may schedule a Section 504 meeting to discuss a student's transition to post-secondary opportunities. Section 504 committees do, as a matter of course, meet at least annually to discuss the appropriateness of a student's plan. For high school students, this yearly review is also an opportunity to discuss post-secondary/transition considerations with families. The Section 504 plan is written specifically to address the students' needs within ACPS. ACPS cannot dictate needs/accommodations that are appropriate at the post-secondary level.

**What should a parent/guardian do if they think that the school is not implementing a student's Section 504 Plan?**

The parent/guardian should present the information that suggests that the Section 504 Plan is not being implemented to the school principal at the elementary level, and to the Director of Counseling at the Secondary level. The Principal/ Director of Counseling should look into the concern and take appropriate action. If the concern is not resolved at the school level, either party may refer the concern to central office staff as outlined in the ACPS Section 504 Rights and Procedural Safeguards (504 PR)

**What is ACPS's duty to serve students under Section 504 when placed by their parents/guardians in private, parochial or home schools?**

Once ACPS has offered the student a (FAPE), it has no duty under Section 504 to provide educational programs to students not enrolled in ACPS based on the personal choice of the parent/guardian. In accordance with the Child Find provisions of Section 504, ACPS will offer to conduct section 504 evaluations for any eligible student who is an Alexandria resident residing within the boundaries (attendance area) of ACPS, and attending a private, parochial or home school, who is referred or otherwise believed to have a disability and/or need accommodations or related services under Section 504. If the student is found to be eligible, and data supports the need for a plan, ACPS will develop a Section 504 plan in the event the student enrolls in ACPS.

**What are the school division's obligations to provide transition services or evaluations for students leaving ACPS to enter the postsecondary setting?**

Alexandria City Public Schools is not required to provide transition services for students being served under a 504 Plan or evaluations for graduating students who have received accommodations or services through a 504 Plan. However, parents and students over the age of 18 have the right to request copies of their educational records, which may be helpful in seeking accommodations in college.



Students and their parents are encouraged to familiarize themselves with the protections under Section 504 offered in the college or other postsecondary educational setting. The Office of Civil Rights in the U.S. Department of Education enforces Section 504 and the Title II of the American with Disabilities Act. Its website, [www.ed.gov/ocr](http://www.ed.gov/ocr), offers helpful information and resources.

Parents/guardians and students over the age of 18 have the right to request copies of their educational records, which may be helpful in seeking accommodations in college. Many schools have an office of student support to assist the student.

### **When do Section 504 rights transfer to the student?**

The rights afforded to the parent of a student with a disability transfer to the student at age 18 in Virginia, see Virginia Code 8 VAC 20-81-10. Therefore, the adult student is responsible for consenting to any portion of the 504 process. The ACPS guidance regarding parental rights under Section 504 provides that the parent/guardian/guardian(s) or adult student (but not both) shall be given Section 504 rights under the law. Once a student has been referred to the Section 504 Committee, the school shall notify the student's parent/guardian, or the adult student (but not both) prior to:

- (1) Holding a screening meeting to review records;
- (2) Determining eligibility for services; or
- (3) Developing or revising a Plan.

With regard to an initial referral, ACPS guidelines indicate that teachers, parents, private practitioners, agency representatives, or other individuals may make a referral to the Division. However, the adult student must nonetheless consent to the referral before it proceeds.

### **What procedural safeguards are afforded to parents/guardians and adult students?**

In ACPS, the parent/guardian or adult student should also be made aware of their right to:

- Notice of proposed actions related to eligibility and/or a Section 504 Plan;
- Consent to the administration of any individually administered assessments and the initial placement of their child;
- Have an assessment that considers information from more than one source;
- Have a committee knowledgeable about their child and assessment procedures determine eligibility;
- Examine all relevant records of their child, to challenge that information, and to consent to the release of that information;
- Periodic re-assessments, including a re-assessment before any significant change in placement; (Have their child educated in the least restrictive environment;
- Request an impartial hearing over disagreements and to be represented by counsel in the hearing;
- Appeal the impartial hearing officer's decision to court;
- File a complaint with the Office of Civil Rights (OCR);
- Have a manifestation determination subsequent to any disciplinary action that results in a significant change of placement.

These procedures can be used to challenge an identification, evaluation or placement decision.

### **What are the responsibilities of parents?**

- Share your concerns with the school early before problems become bigger.
- Be involved in Section 504 meetings concerning your child.
- Assist in developing appropriate accommodations and/or services for your child.

- Encourage your child to cooperate with school staff and do his or her best.
- When appropriate, collaborate with other agencies such as vocational rehabilitation.
- Be familiar with your child's rights under Section 504
- Before graduation from high school be familiar with their rights at post-secondary programs.

**What are the responsibilities of the Students?**

- When appropriate, be involved at Section 504 meetings.
- Be familiar with your K-12 rights under Section 504
- Before graduation from high school be familiar with their rights at post-secondary programs.
- Cooperate and put forth maximum effort at school.