

Frequently Asked Questions (FAQ)



Answers to common Section 504 questions are below.

Q: Does a public school have to provide services under Section 504 to a student living in their area, but the student is attending a private school or home school?

A: Districts/charter schools are responsible for identifying and evaluating students suspected of having a disability residing within the school district's boundaries. This includes students who are in private school or being home schooled. Districts/charter schools are required to provide services under Section 504 to a student who is not enrolled.

Q: Do religious private schools have to comply with Section 504?

A: If the private school, sectarian as well as non-sectarian, receives, directly or indirectly, federal funds they are prohibited from discriminating against students because of a student's disability. Compliance with Section 504 in private schools may be different as compared to compliance in public schools (34 C.F.R. Part 104.39).

Q: May a private school increase its program costs for a student with a disability?

A: A private school must not charge additional costs for their program except when there is a substantial increase in the cost to the private school to provide services to a student with a disability (34 C.F.R. Part 104.39).

Q: Does the school system's Section 504 referral process extend to preschool or pre-kindergarten (pre-K)?

A: The district's/charter school's Section 504 referral process only extends to preschool or pre-kindergarten if those services are provided by the district. A district/charter school that operates a public general education preschool program may not discriminate against a student with a disability in the program.

Q: What is the relationship between Section 504 regulations and the Response to Intervention (RTI) process?

A: School systems may always use regular education intervention strategies to assist students. The RTI process should not be used to impede necessary Section 504 referrals. If at any time, a district/charter school employee or parent suspects that a student's difficulties are attributable to a disability, the student should be referred for an evaluation.

Q: Is there a formula or scale that determines or measures "substantial limitation"?

A: No. This determination must be made on a case-by-case basis for each student by a team knowledgeable about the student.

- Q: May a Section 504 Team consider “mitigating measures” used by a student in determining whether the student has a disability under Section 504?**
- A: No. As of January 1, 2009, the district/charter school must not consider the improving effects of a mitigating measure when determining eligibility. Mitigating measures may include medication, medical supplies and equipment, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, assistive technology devices, accommodations, and learned behavioral modifications.
- Q: Are there any impairments that automatically qualify a student under Section 504?**
- A: No. An impairment itself is not a qualified disability, but the mental or physical impairment must substantially limit a major life activity (34 C.F.R. Part 104.3, 104.35).
- Q: Can a medical diagnosis suffice as an evaluation and how may the Section 504 Team utilize a physician’s request for specific accommodations?**
- A: A formal diagnosis is not required. The Section 504 Team needs only to determine that a student is substantially limited in a major life activity based on a review of data. A physician’s medical diagnosis may be considered among other data resources by the Section 504 Team but does not dictate the team’s decision of eligibility or accommodations. It is the educational team’s responsibility to determine how the student may achieve a free appropriate public education.
- Q: What does Section 504 documentation look like in a file of a student that qualifies for Section 504 services?**
- A: Documentation may include the following: Section 504 referral, parent notices, parental consent for initial evaluation, assessment data, teacher input form, parent input form, disciplinary referral data, attendance data, team evaluation and eligibility determination form, Section 504 Plan, evidence of Section 504 Plan implementation, evidence of meetings determining if misbehavior is the result of the disability or submitted complaint forms. All obtained evaluation data sources should be documented.
- Q: How much is enough information to determine and document that a student has a disability?**
- A: The Section 504 Team determines the amount of information necessary to make a knowledgeable decision of the student’s strengths and weaknesses. They are required to draw information from a variety of sources in the evaluation process so that the possibility of error is minimized (34 C.F.R. Part 104.35).

Q: *What are examples of evaluation data?*

A: The evaluation process must measure specific areas of educational need. (e.g., speech processing, inability to concentrate, & sensory processing). The test results must accurately reflect the student's aptitude or achievement rather than the student's disability, except where those are the factors being measured. The materials should be validated for the specific purpose for which they are used, and tests should be appropriately administered by trained personnel. Data may include the pediatrician's report; aptitude and psychological test results; student's grade, attendance, or behavior reports; teacher observations; the student's social and cultural background; or the student's family observations.

Q: *Is parental consent for evaluation of Section 504 required?*

A: The Office for Civil Rights (OCR) interprets Section 504 to require informed parental consent for the initial evaluation. If a parent refuses consent for an initial evaluation and a school district/charter school suspects that a student has a disability, OCR interprets Section 504 to allow school districts/charter schools to use impartial hearing procedures to seek to override the parent's denial of consent.

Q: *If a parent refuses to consent to an initial evaluation but demands a student Section 504 Plan, how may a school system respond?*

A: A school district/charter school must evaluate a student prior to providing services under Section 504.

Q: *How often does reevaluation or plan review occur?*

A: Periodic reevaluation is required. This may be conducted at three-year intervals or more frequently. A reevaluation is required prior to a significant change in placement. The Section 504 Plan should be updated by the Section 504 Team when it is no longer appropriate.

Q: *What is considered a significant change in placement?*

A: The Office for Civil Rights (OCR) considers a significant change in placement to include:

- Excluding from the educational program for more than ten (10) school days
- Transferring a student from one type of program to another
- Terminating or significantly reducing a related service

Q: *Can placement include resource placement, self-contained placement, homebound placement, or Alternative Learning Environments (ALE)?*

A: Yes. A free appropriate public education should be provided in the most Least Restrictive Environment (LRE) utilizing an "incremental approach" when recommending more restrictive settings (*J.H., v. Fort Bend Independent School District, No. 11-20718 [5th Circuit] July 26, 2012*).

Q: Does a district/charter school need to develop a Section 504 Plan for every student who has a disability?

A: No. A Section 504 Plan needs to be developed for those students who, because of a disability, need accommodations or a related aid or service to benefit from the educational program. A school system's duty to a student who "has a record of disability" or is "regarded as disabled" is to protect the student from discrimination.

Q: How may a district/charter school respond when a parent refuses an accommodation written in the Section 504 Plan?

A: The district/charter school may ask the parent to provide a written statement of their refusal to receive the designated accommodation. If the parent refuses to provide a written statement, the district/charter school may provide a written statement to the parent of their understanding regarding the parent's refusal of the accommodation and encourage a response to their letter by the parent, if the district's understanding is inaccurate.

Q: How may attendance be taken for a student receiving Home/Hospital Instruction (homebound services) under Section 504?

A: The school system ensures that the student is enrolled but listed as receiving Home/Hospital Instruction. The Section 504 Plan should outline the schedule of services. Absences should be based upon the schedule of services and align with the local school board approved Excused and Unexcused Absence Procedures.

Q: What is the relationship between attendance policies and students being served under Section 504?

A: Attendance policies must allow a student's parent to petition the school or district administrator for additional absences and allow exceptions as necessary to satisfy the Section 504 Plan. For additional guidance, see *ADE Commissioner Memo 12-013: Student Attendance Policies and Excused and Unexcused Absences* (Act 1223 of 2011). The district/charter school must be cautious in facilitating truancy complaints when there is suspicion that the student's excessive absences may be the result of a disability. The student's reason for excessive absences should be investigated to prevent Section 504 referral process violations. Collaboration between necessary individuals (e.g., Section 504 Team, school nurse, parent, or student) is key when determining the impact of a disability on attendance.

Q: Can a temporary health condition or impairment that is episodic or in remission be a disability covered by Section 504?

A: Yes, if the temporary impairment substantially limits learning or any other major life function. Determining if a temporary impairment is substantial enough to be a qualified disability must be reviewed on a case-by-case basis, considering the duration of the impairment and its impact on learning. (e.g., pregnancy-related complications, epilepsy, depression, post-traumatic stress disorder, cancer, oppositional defiance disorder)

Q: *How should a district/charter school manage Section 504 Plans for students with long-term attendance issues? Is teacher monitoring of online assignments sufficient?*

A: The Section 504 Team should detail within the student's Section 504 Plan how the school will provide reasonable accommodations in light of the student's need, considering both the quality and quantity of what is being provided. Input from the parent and the student is invaluable when determining what is reasonable. Teacher monitoring of online assignments may be sufficient to ensure that the student receives an appropriate education that is comparable to students without disabilities.

Q: *If a student has a peanut allergy, would the district/charter school be required to provide a peanut-free diet to the student?*

A: If a school provides food services such as breakfast and lunch to all students, it needs to provide food services that meet the disability-related needs of students with disabilities by accommodating special dietary needs.

Q: *Can a district/charter school exclude a student with a disability from a field trip?*

A: A district/charter school cannot exclude a student with a disability from participating in a field trip for which they are otherwise eligible to attend unless there is a legitimate, nondiscriminatory justification. It is not permissible under Section 504 to exclude a student with a disability from a field trip because they need related aids or services (e.g., medication administration) to participate or the parent is unable to attend – unless parent participation is required of all students. A decision to exclude a student with a disability from a field trip is a placement decision. All placement decisions must utilize procedures that satisfy the evaluation, placement, and due process requirements of Section 504.

Q: *How is student disciplinary misconduct reviewed under Section 504?*

A: The district/charter school must conduct an evaluation before significantly changing an educational placement for disciplinary reasons. Section 504 regulations do not specifically state "manifestation determination", but the Office for Civil Rights (OCR) suggests the first step would be to consider if the misconduct was caused by the student's disability. Decisions must be based on recent evaluation data and an understanding of the student's current behavior.

Generally, a student served under Section 504 who is currently engaging in the illegal use of drugs may be disciplined for such use even if the conduct was a manifestation of the disability.

Q: *If a student is in possession of illegal drugs or alcohol, do Section 504 protections against discriminatory discipline still apply?*

A: If a student with a disability that is served under Section 504 is found in possession of drugs or alcohol, they still have access to the protections under Section 504. A student with a disability who is not currently using illegal drugs or alcohol but commits a drug or alcohol offense is afforded Section 504 protections, including the right to a manifestation determination (29 USC §705(20)(C)(iv)).

- Q: *What happens if the behavior was caused by the disability?***
A: The school, parent(s), and student collaborate to improve the Section 504 Plan and its implementation. This may include completing a Functional Behavioral Assessment (FBA) or adding a Behavior Intervention Plan (BIP) to the Section 504 Plan.
- Q: *What happens if the behavior was not caused by the disability?***
A: The school may implement their local school board-approved actions, sanctions, or consequences for the offense.
- Q: *Can a student served under Section 504 be administered corporal punishment if the behavior was not caused by the disability?***
A: Yes, if the administration of the corporal punishment is in accordance with their local board-approved policy and state requirements. Arkansas Code Annotated (A.C.A.) §6-18-503 (Act 557) prohibits the use of corporal punishment on a student who is intellectually disabled, non-ambulatory, non-verbal, or autistic.
- Q: *Does an Arkansas student served under Section 504 have a right to educational services during expulsion?***
A: Yes. The Section 504 federal statute, unlike the IDEA, does not provide a legal right to receive educational services as an expelled student. A. C. A. §6-16-406 (Act 709) requires Arkansas school districts/charter schools to offer to students that have been expelled digital learning courses or alternative educational services for credit. For this reason, districts/charter schools in Arkansas are required to provide Section 504 protections and/or services to the expelled students that they serve.
- Q: *What are “related aids and services” under Section 504?***
A: Related aids and services include but are not limited to: school health services; counseling services; environmental, instructional, and behavioral accommodations; transportation services; speech-language services; audiology services; physical and occupational therapy services; orientation and mobility services; and modifications of a schedule, grading system, or curriculum.
- Q: *Is the district/charter school required to provide transportation to a related aid or service?***
A: The district must ensure adequate transportation to and from the aid or service (34 C.F.R. 104.33).
- Q: *Does a district/charter school have to implement a transferring student’s Section 504 Plan?***
A: The receiving district/charter school must meet the needs of students with disabilities. They should review the Section 504 Plan and any other documentation immediately. If the school system determines that the plan is appropriate, they are required to implement the plan. If the district/charter school determines that the plan is inappropriate, they are required to evaluate the student and determine appropriate services. In the meantime, the receiving school system may honor the previous plan.

Q: *Can a district/charter school deny a student's admission under school choice solely because the student has a disability or needs special education or related aids or services?*

A: No. A district/charter school participating in school choice may not discriminate in admission against a student based on a disability. Students with disabilities must be provided an equal opportunity to be admitted as compared to peers without disabilities. Procedures must be neutral and applied equally to students with and without a disability. School choice application rejection must be in accordance with statutory regulations.

Q: *How does Section 504 impact college education?*

A: Section 504 protects students from discrimination due to their disability when attending a postsecondary institution and can receive accommodations. The process of requesting and receiving accommodations in college is not the same as in K-12. Institutions are not required to locate students with disabilities nor conduct an evaluation although some do. Students in postsecondary education must notify institution staff if they need an academic adjustment. Requirements to document a disability vary. Being provided a Section 504 Plan in high school does not automatically mean the student will receive accommodations in the college or university.

For information regarding eligibility for vocational services and a no-cost evaluation through Arkansas's Rehabilitation Services (ARS) see <https://arcareereducation.org/about/arkansas-rehabilitation-services>.

Q: *How does Section 504 impact getting into the military?*

A: A military recruiter would be best equipped to provide the most up-to-date information and answer specific questions on this issue.

Q: *If a parent disagrees with the Section 504 Team's decision regarding a student's eligibility for services, what can they do?*

A: The parent may communicate their concern to the District Section 504 Coordinator, utilize the school board-approved Section 504 Grievance Procedures, request a local Section 504 impartial hearing, submit a complaint to the Compliance Assistance Center (CAC), submit a complaint to the Office for Civil Rights (OCR), or file for civil recourse.

Q: *Are parents with a disability entitled to services that enable them to participate in their child's school activities, even if the student does not have a disability?*

A: Under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, parents or other individuals with disabilities must be provided with appropriate auxiliary aids and services to ensure equal access and meaningful participation in school programs and activities. Reasonable accommodation to ensure effective communication might include qualified interpreters, real-time captioning, or assistive listening devices, as determined by the school system. Services must not impose an undue burden or fundamentally alter the program. Schools should publicize the process of requesting accommodation.

For information regarding specific circumstances see the OCR frequently asked questions *Guidance on Effective Communication for Students with Hearing, Vision, or*

Speech Disabilities in Public Elementary and Secondary Schools, November 12, 2014 ([link](#), Question 7).

Q: *Are there specific guidelines to following when identifying the Section 504 Coordinator?*

A: The law requires a school system to designate a responsible employee to coordinate its efforts to comply with Section 504. The statute does not provide specific qualifications or detailed guidelines for the employee. To adequately coordinate Section 504 efforts, the individual must be trained in Section 504 processes and have appropriate time to ensure compliance.

Q: *How long are Section 504 records maintained after a student withdraws or graduates?*

A: Regarding Section 504 of the Rehabilitation Act of 1973 and the Family Educational Rights and Privacy Act (FERPA), neither federal law dictates a time frame for which records must be maintained. [FERPA](#) (§99.10 [e]) requires that once a request is made for a record, it cannot be destroyed until the request is completed. Arkansas DESE rules regarding student permanent records are located [here](#) (see section 3.03). The CAC recommends that Section 504 records be kept for the same length of time as other student records (including IEPs). A common practice for many school districts/charter schools is to maintain them for at least three (3) years.

Q: *How does the Compliance Assistance Center (CAC) get involved in disability issues within a district/charter school?*

A: CAC receives complaints from parents, students or advocates, conducts complaint investigations, and provides technical assistance to districts/charter schools. Except in extraordinary circumstances, CAC does not review the result of individual placement or other educational decisions as long as the school system complies with the procedural requirements of Section 504.

Q: *How does the Office for Civil Rights (OCR) get involved in disability issues within a school district/charter school?*

A: OCR receives complaints from parents, students or advocates, conducts agency-initiated compliance reviews, and provides technical assistance to school districts/charter schools, parents or advocates. Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions as long as the school system complies with the procedural requirements of Section 504.

A portion of the answers regarding Section 504 are from *Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, U.S. Department of Education, Office for Civil Rights.

For additional frequently asked questions on the topic of Section 504 see [SECTION THREE: Links \(e.g., Public Resources\)](#).