

St. George Municipal School Unit

Section 504 Handbook

DrummondWoodsum

SchoolLaw.com ~ DWMLaw.com

Copyright 2014 Drummond Woodsum. All rights are expressly reserved.

Section 504 Handbook

Table of Contents

	<u>PAGE</u>
Introduction	3-1
What is Section 504?	3-1
The ADA Prohibits Disability-Based Discrimination	3-1
Is Section 504 a Special Education Law?.....	3-2
Which Students Qualify for Coverage under Section 504?	3-2
How Does the Section 504 Process Work?.....	3-6
Student Discipline under Section 504.....	3-9
Extracurricular Activities	3-10
Impartial Hearings and the Grievance Procedures.....	3-10
Notice of Parent/Student Procedural Safeguards	3-10

Section 504 Handbook

Introduction

This handbook is intended as a resource for students, parents and school district staff regarding the requirements of Section 504 as they relate to students. Questions or concerns about specific students should be addressed to:

Section 504 Coordinator
Mike Felton
207.372.6312

What is Section 504?

Section 504 is part of the federal Rehabilitation Act of 1973, which was enacted by Congress to combat discrimination against individuals with disabilities in programs and activities administered by any entity that receives federal financial assistance, including public schools. Section 504 states in pertinent part:

No otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance....

The ADA Also Prohibits Disability-Based Discrimination

The Americans with Disabilities Act ("ADA") also prohibits discrimination based on disability, but it is broader and applies to all public entities (including schools), whether or not they receive federal funds. The ADA also prohibits disability-based discrimination in employment by employers (public or private) with 15 or more employees, as well as in "places of public accommodation" such as stores, hotels, restaurants, day care centers, and private non-religious schools. State laws may also prohibit disability-based discrimination in public schools. The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) amended both the ADA and Section 504 in a manner that expands coverage of individuals but did not substantively change the obligation owed to individuals who qualify for protection. In general, this handbook will refer to Section 504 and the ADA together.

Is Section 504 a Special Education Law?

No. While special education students who qualify for services under federal and state special education laws (i.e., the Individuals with Disabilities Education Act or IDEA) may also qualify for protection under Section 504, Section 504 students are not necessarily covered by special education laws. To qualify for special education, there must be evaluations and observations showing that the student has one of a number of specific, listed disabilities; that the student's condition has an adverse effect on his/her educational performance; and that the student requires specialized instruction to ensure a free appropriate public education (FAPE). To be eligible under Section 504, a student must demonstrate that he/she is a qualified individual with a disability under standards that are different from special education students. Students eligible under Section 504 often require some type of accommodation or related aids and services that are necessary for the child to access his or her educational program, to be provided with an equal educational opportunity, and to gain access to a free appropriate public education. Generally speaking, students who qualify only under Section 504 will not be receiving direct instructional services of a specialized nature and, in many cases, their related aids and services are provided in a regular education setting. Students with disabilities who require specialized instruction because of that disability will more often be served through special education and an individualized education program (IEP).

Which Students Qualify for Coverage Under Section 504?

Section 504 and the ADA provide specific protections for "qualified individuals with a disability." There are three categories that may qualify someone as an "individual with a disability." These are:

- 1) A person who has a physical or mental impairment which substantially limits one or more major life activities;
- 2) A person who has a record of such an impairment; or
- 3) A person who is regarded as having such impairment.

Most of the student situations that schools encounter involve students with actual current impairments that substantially limit a major life activity. These students may need specific services and accommodations in order to access the school program, but it may occasionally also be true that an eligible child under Section 504 is not in need of any interventions at the present time, especially based on the expansion of the ADA and Section 504 by the enactment of the ADAAA. Protection under the second category listed above generally would not require providing special accommodations or services. The ADAAA makes clear that there is no duty to accommodate based on the third category of "regarded as." Instead, the second and third

categories generally protect against negative, discriminatory actions by the school or school officials, a protection also available to individuals in the first category. It may occasionally be true, however, that a child with a record (or history) of a disability may need to be permitted to leave school to attend a session of some sort following up on his or her former disability.

For a student to be identified under Section 504, in most circumstances the school must conclude that the child has: (1) a physical or mental impairment that (2) substantially limits (3) a major activity. Each of these three concepts is briefly discussed below.

Physical or Mental Impairments

The regulations define “physical or mental impairments” through examples. Physical impairments include “any physiological disorder or condition, somatic disfigurement, or anatomical loss affecting one or more” listed body systems. These include neurological, musculoskeletal, special sense organs, respiratory or speech, cardiovascular, reproductive, digestive, genito-urinary, hemic/lymphatic, skin and endocrine body systems. Mental impairments are “any mental or psychological disorder.” The identification categories in the DSM-V Psychological Manual can be a useful guide to identifying mental impairments, although those categories are not legally binding.

For a physical or mental impairment to substantially limit a major life activity, the impairment should limit that activity to an ample or considerable degree. It should be more than a minor limitation. Generally, the substantial limitation might be expected to last more than three months in length. The substantial limitation should be in comparison to most students in the general population of that particular age. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. An impairment will be viewed as substantially limiting when the student is:

- (i) Unable to perform a major life activity that the most people in the general population can perform; or
- (ii) Substantially restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which most people in the general population can perform that same major life activity.

The following factors may be useful in making the determination:

- The nature and severity of the impairment;

- The duration or expected duration of the impairment; and
- The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

Section 504 and the ADA state that when determining whether an impairment is substantially limiting, the beneficial effects of any “mitigating measures” the student has been using should be ignored. The law defines “mitigating measures” to be factored out of the eligibility decision as including:

1. Medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen therapy equipment and supplies;
2. Use of assistive technology;
3. Reasonable accommodations or auxiliary aids or services; or
4. Learned behavioral or adaptive neurological modifications.¹

Thus, if a student seems fine as a result of some medication, accommodation or assistive technology the student receives, but without it he or she would be substantially limited in a major life activity, the student will likely be a qualified person with a disability under Section 504 and the ADA. Please note that if the impairment is well controlled by virtue of some mitigating measure, the student may not need any interventions and supports in a 504 Plan, even though the student is considered disabled under the law. As a general matter, typical supports or interventions provided by regular education teachers to any student in the classroom, whether or not the student has a disability, are not considered a “mitigating measure.” A more refined behavior intervention plan, however, would likely be viewed as a “learned behavioral modification.”

¹ At the time this manual was going to print, the U.S. Department of Justice had issued a notice of proposed rulemaking. That notice includes a provision to amend the ADA to add three forms of therapies to the list of mitigating measures: psychotherapy, behavioral therapy and physical therapy. See proposed regulation 28 C.F.R. § 35.108(d)(4)(v). We expect these regulations will be approved.

“Major Life Activities”

Major life activities are defined as activities that most people would probably consider important to daily life. The law includes a long list of major life activities, but the list is not exhaustive. The listed categories are:

1. Caring for oneself;
2. Performing manual tasks;
3. Seeing;
4. Hearing;
5. Eating;
6. Sleeping;
7. Walking;
8. Standing;
9. Lifting;
10. Bending;
11. Speaking;
12. Breathing;
13. Learning;
14. Reading;
15. Concentrating;
16. Thinking;
17. Communicating;
18. Working; and
19. The operation of a major bodily function.

The “operation of a major bodily function” at the end of the list above includes, but is not limited to, the operation of the following bodily functions:

1. Function of the immune system;
 2. Normal cell growth;
 3. Digestive;
 4. Bowel;
 5. Bladder;
 6. Neurological;
 7. Brain;
 8. Respiratory;
 9. Circulatory;
 10. Endocrine; and
 11. Reproductive function.
-

There is a proposal to add sitting, reaching, and interacting with others to the list of major life activities that apply in school settings, just as those activities have been added to employment regulations. The District considers those three additional categories to be in effect, given the current state of the law.

Case by Case Decisionmaking

In conclusion, the determination of whether a particular impairment qualifies for Section 504 protections can be complex and must be made on a case-by-case basis in accordance with district policies and procedures. In all cases, however, there must be a physical or mental impairment that substantially limits a major life activity.

How Does the Section 504 Process Work?

The district has established a set of procedures and forms that guide Section 504 processes to ensure that the school meets its Section 504 responsibilities to students. A summary of that process follows.

1. Any parent, legal guardian or school staff member may initiate a referral of a student who is believed to be a child with a disability under Section 504. An adult student of eligible school age also may initiate such a referral for him or herself.
2. A referral for Section 504 must be forwarded to the building 504 Coordinator. This person shall ensure that the district's 504 Referral Form is properly filled out, which will initiate the 504 referral process. Based on the information in the referral form, the 504 Coordinator may choose to refer the child to the district's special education process instead of the 504 referral process.
3. The building Section 504 Coordinator will convene a team meeting within a reasonable time to consider the information gathered with the person making the request. The Team will document their decision and provide a notice of procedural safeguards to the parent/guardian. The Team may need to further evaluate the student to determine eligibility and/or appropriate placement. The Team may also decide to refer the child to the district's special education process, or to access any available pre-referral process that may be operating in the school building.

4. All decisions regarding a student's 504 eligibility, placement and the provision of any necessary related aids and services will be made by the 504 Team, and will be based on information from a variety of sources, with information from all sources being carefully considered and documented.
5. Members of the 504 Team may include the building 504 Coordinator or approved designee and other appropriate school staff who are knowledgeable about the student, the evaluation data and/or the placement options. This may include a school nurse when appropriate. One or more teachers may be invited to attend. The student's parent/guardian is typically invited to participate in the 504 Team meeting. The School or the parent/guardian may invite other individuals with knowledge about the child and/or the process to the 504 meeting.
6. A written notice will be given to the parent/guardian or adult student prior to the meeting, notifying them of the time and place of the meeting.
7. The building 504 Coordinator or approved designee will chair the meeting and may assign a member of the 504 Team the duty of taking minutes at the meeting if notes are to be taken. A copy of the minutes will be made available to the parent/guardian upon request and placed in the student's education records within a reasonable time after the meeting.
8. The Team must ensure that decisions about student eligibility or about significant changes in the student's program or supports are based on an evaluation of the child, which could include a review of existing evaluative data. If this evaluation is going to include specific testing of the child, the school must obtain written consent from the parent/guardian before conducting that testing. If a parent refuses to provide consent for an initial evaluation to determine a student's 504 eligibility, the school may, but is not required to, initiate a 504 hearing challenging the parent's decision.
9. Team decisions are typically made by consensus. It is not appropriate to make eligibility, placement, or programming decisions based on a majority "vote." In the absence of consensus, the 504 Coordinator or designee at the meeting will make the final decision regarding a child's eligibility and, if needed, the placement and related aids and/or services that the child needs.
10. The school district must provide the parent/guardian with notice of the district's proposals or refusals, or both, regarding the child's educational program, and with

notice that the parent/guardian has a right to seek resolution of any disagreements through the local grievance procedure or by initiating an impartial hearing request.

11. When considering a student's eligibility under Section 504, the Team will complete a 504 Eligibility Form. A copy of the completed Eligibility Form is available for the parent/guardian upon request and shall be placed in the student's education records.
12. This school district requires written parent consent for the child's placement into the 504 system, but does not require parent consent for the contents of the plan or for any subsequent changes in the child's 504 plan. If the student is an adult and does not have a legal guardian, the District shall then provide notice of decisions to the student and may seek consent from the student when consent is required. *Again, written consent is not required for subsequent changes in 504 services.*
13. If the Team determines that an eligible student requires accommodations and/or related aids or services, a Student 504 Plan will be written.
14. If the Team determines that an eligible student does not now require any accommodations and/or related aids or services, the school district will document that decision to the parent/guardian.
15. The 504 Plan will be made available to all staff who have responsibilities under the Plan, to the parent/guardian and the 504 Coordinator. A copy of the 504 Plan will also be placed in the student's education records within a reasonable time after the meeting, unless the building maintains a separate 504 folder.
16. The 504 Plan will be reviewed periodically. If the parent/guardian or school staff believes that an eligible student with no current plan may require accommodations, that individual should request that a 504 Team meeting be convened.
17. All 504 students must be reevaluated periodically, but no less than every three years, to determine their ongoing eligibility and, if eligible, their continued need for accommodations or related aides and/or services. The reevaluation process may consist of reviewing existing evaluative information and other data.

At any point in the 504 process, school staff or the parent/guardian or adult student may initiate a referral to consider the student's eligibility for special education.

Student Discipline

It is important to understand that students who are identified as disabled under both Section 504 and special education laws are covered by the special education discipline rules. For students identified only under Section 504, the discipline rules are somewhat less stringent.

A Section 504 student may be suspended for up to 10 consecutive school days as long as the suspension is consistent with the rules and procedures applied to non-disabled students. Unlike special education, there is no independent duty under Section 504 to provide alternative (or tutorial) services to 504 students who have received suspensions in excess of 10 cumulative days in the school year.

If the student is suspended or expelled for a length of time that would be considered a significant change of placement, the Section 504 Team must convene a meeting to determine whether the misconduct was the result of the student's disability. In making this causative assessment, the 504 Team will determine whether the misconduct was "caused by" or had a "direct and substantial" relationship to the student's disability or is the direct result of the school district's failure to implement the student's 504 plan.

A disciplinary removal will be considered a significant change of placement if:

1. The removal is for more than 10 consecutive school days; or
2. There is a series of disciplinary removals totaling more than 10 school days in the school year, and that series constitutes a pattern because the behavior is substantially similar to the previous incidents that resulted in the removals, and because of additional factors such as the length of each removal, the total removal time and the proximity of the removals to each other.

If the 504 Team determines that the misconduct is the result of the disability, then any further programming or removal decisions must be addressed through the Section 504 Team meeting process, based on a consideration of evaluative data, and must be calculated to meet the student's educational needs. If the 504 Team determines that the student should be served in a location other than his or her regular school setting, services must be provided to that student that are reasonably likely to provide the student with a FAPE.

If a determination is made that the misconduct was not the result of the student's disability, then the student may be treated in the same manner as a non-disabled student. There is no

requirement in this situation to provide any educational services during the suspension/removal, if non-disabled students also would be denied educational services.

A Section 504 student who is found to have violated school policies and/or rules on the use or possession of illegal drugs or alcohol, *and* who is also currently using drugs or alcohol, may be disciplined to the same extent and degree as non-disabled students, without the need for a Section 504 Team meeting, manifestation determination or alternative services.

Extracurricular Activities

A disabled student is qualified to participate in non-academic services such as extracurricular activities if he or she “meets the essential eligibility requirements for the receipt of such services.” Safety may qualify as an essential criterion. If the student meets the eligibility requirements for the activity, with or without reasonable accommodations, the district has an obligation to permit the student to participate on equal terms with non-disabled students and must provide any necessary accommodations at no cost to the student.

Most disputes regarding students with disabilities in extracurricular activities concern whether requested accommodations would be reasonable and necessary for the district to provide but without fundamentally altering the program. These issues are complex and have been litigated extensively in the courts. It may be appropriate to convene the student’s Section 504 Team before the student is denied access to a desired activity.

Impartial Hearing and Complaint Procedures

Impartial Hearing

When a parent/guardian or adult student disagrees with the district’s decisions regarding the Section 504 process, they are entitled to request a hearing conducted by an impartial hearing officer. Questions regarding how to request a hearing under this section should be directed to the Section 504 coordinator.

Complaint Procedure

The district maintains a student Discrimination and Harassment Complaint Procedure. This procedure provides a process for students or parents/guardians to raise concerns regarding the school’s compliance with its obligations under state and federal discrimination and disability laws, including Section 504.

Notices of Parent/Student Procedural Safeguards

The School District has adopted procedural safeguards that summarize the rights of students and parents under Section 504.

NOTICE OF PARENT/STUDENT PROCEDURAL SAFEGUARDS

Section 504 of the Rehabilitation Act of 1973

The following is a description of the procedural safeguards afforded pursuant to Section 504 of the Rehabilitation Act ("Section 504") to parents and their children who are identified as disabled. The school district is obligated to inform you of decisions about your child and of your rights if you disagree with any of those decisions.

You have the following rights:

1. To have your child take part in, and receive benefits from, public education programs without discrimination because of his/her disability;
2. To have the school district advise you of your rights under federal law;
3. To receive notice from the school with respect to the identification, evaluation, educational program or placement of your child;
4. According to the U.S. Department of Education's 504 regulations, to have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to reasonable accommodations, modifications, and related aids and services necessary for your child to benefit from his or her educational program.
5. To have your child educated in comparable facilities and receive comparable services to those provided non-disabled students;
6. To have decisions regarding your child's evaluation, program and placement based upon a variety of information sources, and made by persons familiar with the student, the evaluation data, and the placement options;
7. To have your child re-evaluated periodically, to the extent necessary, including before any significant changes are made to your child's educational program or placement;

8. To have your child receive an equal opportunity to participate in extra-curricular school activities;
9. To examine all relevant educational records relating to decisions regarding your child's identification, evaluation, education program, and placement;
10. To file a complaint through local complaint procedures regarding any alleged violation of the Rehabilitation Act;
11. To request an impartial hearing, to be conducted by a person who is not an employee of the district, to dispute decisions or actions regarding your child's identification, evaluation, educational program or placement as a student with a disability. You and your child may take part in the hearing and have an attorney represent you at your own expense. Questions about how to request a hearing may be forwarded to the person responsible for the district's compliance with Section 504 listed below;
12. To have the decisions made by hearing officers or others reviewed in state or federal court.

The person in this District who is responsible for assuring that the District complies with Section 504 is:

Mike Felton
Special Education Director/ 504 Coordinator
207-542-6394