

A Parent Guide to Section 504 of the Rehabilitation Act of 1973

EQUAL RIGHTS FOR ALL STUDENTS



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*The Utah State Office of Education has updated the 2007 Parent Guide. The contents of the document do not necessarily reflect the position of the Office for Special Education Programs (OSEP) or the Office for Civil Rights (OCR), and no official endorsement should be inferred. **This document is meant to provide guidance only.** For legal advice, always check with an attorney.*

A Parent Guide to Section 504
of the Rehabilitation Act
of 1973 and the
Americans With Disabilities Act (ADA)

EQUAL RIGHTS FOR ALL STUDENTS



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A PARENT GUIDE to Section 504

provides information and describes some of the requirements of Section 504 of the Rehabilitation Act of 1973 with respect to preschool, elementary, and secondary school policies involving placement of children with physical and mental disabilities.

This pamphlet is designed specifically to give parents understanding by providing information to help understand 504 services.

The Utah State Office of Education has developed a manual entitled *Section 504/ADA Guidelines for Educators* that explains how a student might be eligible for Section 504 services. Information regarding these guidelines is available by calling the Utah State Office of Education or going to our Website at <http://www.schools.utah.gov/equity>.

What is Section 504?

Section 504 is the part of the Rehabilitation Act of 1973 that applies to individuals with disabilities. It helps protect the civil rights of persons with disabilities. Section 504 is a nondiscrimination statute, prohibiting discrimination based on disability.

Section 504 requires that no person with a disability be excluded from or denied benefits of any program receiving federal financial assistance; this includes education.

Federal Requirement

Section 504 and special education (IDEA) are two possible service options for children with disabilities. All school districts should have a Section 504 Coordinator to answer questions regarding Section 504 procedures.

HISTORICAL BACKGROUND

Section 504 of the Rehabilitation Act of 1973 is a civil rights law prohibiting discrimination based on disability. For many years, school districts perceived their main obligation as ensuring physical access to public buildings (e.g., ramps were installed, curbs were cut, elevators were added to multilevel buildings, restroom stalls were enlarged). With passage of the Rehabilitation Act of 1973, Congress required that school districts make their programs and activities accessible and usable to all individuals with disabilities.

Within the last several years, the Office for Civil Rights (OCR) has become active in assisting school districts in further defining “access.” The definition of access means more than physical access; a student may require special accommodations, such as modified assignments in order to benefit from his/her education.

DEFINITION OF SECTION 504 ELIGIBILITY

Section 504 of the Rehabilitation Act of 1973 protects students from discrimination based on their disability. A student is eligible for accommodations under Section 504 *if the student has a mental or physical impairment that substantially limits one or more of a student’s major life activities. This is determined by an evaluation conducted by the school, and the results are considered by a team that includes the parents.*

“Appropriate education” A free appropriate public education (FAPE) is one provided by the elementary or secondary school that includes general or special education and related aids and services that:

- (1) Are designed to meet the individual educational needs of an eligible student with a disability as adequately as the needs of an eligible student who is nondisabled are met.
- (2) Are based on adherence to evaluation, placement, and procedural safeguard requirements.

“Major life activities” include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive and could include other major life activities.

“Major bodily functions” include, but are not limited to, functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions (ADA amendments act update, 1–8–2010). When a condition does not substantially limit a major life activity that affects education, the student does not qualify for protection under Section 504.

A student also cannot be served under Section 504 if the parent/guardian chooses to revoke services under IDEA based on the IDEA Part B regulations. The recent court case *Lamkin v. Lone Jack C-6 School District*, 58 IDELR 197 (W.D. Mo.2012), takes the position that parents who revoke consent for special education services are also revoking consent for services under Section 504.

In order to determine eligibility for Section 504 accommodations or services, the child must be evaluated by a team of individuals who are familiar with the child and knowledgeable about the disability. The results will be shared at a team meeting in which you are involved. The student is *disabled* if:

- (i) the student has a physical or mental impairment that substantially limits one or more major life activities,
- (ii) the student has a record of such impairment, or
- (iii) the student is regarded as having such an impairment [34 CFR 104.3(j)(1)].

Section 504 requires a level playing field for students with disabilities, not an unfair advantage. This means that students with disabilities have the same or equal access to curriculum and activities as the general population.

How are students with disabilities identified?

Many students eligible for Section 504 accommodations have special health care needs; some of these could include HIV, Tourette's syndrome, attention deficit hyperactive disorder (ADHD), attention deficit disorder (ADD), obesity, central auditory processing disorder, heart malfunctions, communicable diseases, urinary conditions, blood disorders, chronic fatigue syndrome, school phobia, respiratory conditions such as asthma, epilepsy, cancer, birth defects, tuberculosis, diabetes, and food allergies. (The above list is not exhaustive.)

What are some differences between special education and Section 504?

Issue	Section 504	Special Education
Type	A Civil Rights Act	An Education Act
Responsibility	General Education	Special Education
Funding	School funding	State/federal/local funding
Administration	Section 504 Coordinator	Special Education Director
Service Tool	Accommodation plan	Individualized Education Program (IEP)
Disabilities	Any disability if eligible	Qualifying categories
Parents	Should be involved in all team meetings	Must be involved in all team meetings
Procedural Safeguards	Notice and consent of parents is required	Parent consent and notice required for initial evaluation, placement, and reevaluation
Evaluation and Eligibility	An evaluation is necessary before it can be determined if a child is eligible under Section 504.	An evaluation is necessary before it can be determined if a child is eligible for special education.

Does Section 504 require evaluations?

Section 504 requires that a school evaluate any student who, because of a disability, needs accommodations that would assist in keeping the child in the general education classroom. An evaluation is also required prior to any significant change in placement. Most evaluations under Section 504 only involve considering information that has already been gathered, such as by a medical doctor. The evaluation data should be reviewed to determine whether it is current or needs to be updated.

If the school and/or parent have reason to believe that, because of a disability as defined under Section 504, a student needs accommodations in order to participate in the school program, the school must evaluate the student. If it is determined that a student is disabled under Section 504, the school must develop and implement all needed accommodations agreed by the Section 504 committee.

SERVICES

The determination of what accommodations are needed must be made by a group of persons knowledgeable about the student and also about the disability. This usually involves the school principal, classroom teacher(s), and other educators working with the child. The parent should be included in the process. The group will review the nature of the disability and how it affects the student's education. The decisions about Section 504 eligibility and services should be documented in the student's file and reviewed periodically.

An appropriate education for students eligible under Section 504 may consist of education in general classes with accommodations and programs designed to meet their unique needs.

It is important to keep in mind that some students who have physical or mental conditions that limit their ability to access and participate in the education program are entitled to accommodations under Section 504 even though they may not fall into a disability category covered under special education.

What does making accommodations mean?

Accommodations are made by the classroom teacher(s) and other school staff members to help students benefit from their educational program. In some cases, a written plan will be developed outlining accommodations.

EXAMPLES OF POSSIBLE ACCOMMODATIONS

1. *By classroom teacher(s) or other school staff members:*

- ▶ Modify assignments and tests.
- ▶ Extend time on assignments and tests.
- ▶ Provide an extra set of textbooks for home.
- ▶ Adjust student seating.
- ▶ Use study guides and organizing tools.
- ▶ Provide a peer tutor/helper.
- ▶ Provide school counseling.
- ▶ Have the student use an organizer—train him/her in organizational skills.
- ▶ Provide preferential seating.
- ▶ Modify recess/PE/transportation.
- ▶ Each student's accommodations are based upon his/her unique needs and decided by a team, including the parents, who are knowledgeable of the student.



2. *Of a student who is eligible for Section 504 and the possible accommodations provided by the school:*

A student has been diagnosed as having asthma. The doctor has advised the student not to participate in physical activity outdoors. The disability limits the major life function of breathing.

- ▶ Modified activity level for recess, physical education, etc.
- ▶ Use of air purifier
- ▶ Avoidance of allergens
- ▶ As necessary, medication administration
- ▶ Access to water, gum, etc.
- ▶ Curriculum considerations (science class, PE, etc.)
- ▶ Time of year—bus transportation in winter
- ▶ Health care and emergency plan

3. *Of possible accommodations by school personnel:*

The school should develop a written Section 504 plan describing the accommodations. Service decisions must be based on evaluation information and student needs. The decisions must be made by a group of persons knowledgeable about the child, the disability, and the meaning of the evaluation data.

RESPONSIBILITIES

What are the school's responsibilities under Section 504?

It must be emphasized that Section 504 falls under the management responsibility of the general education program. The school staff and parents need to work in collaboration to help guarantee that the student is provided with the necessary accommodations.

To be in compliance with Section 504, schools must do the following:

1. Provide written assurance of nondiscrimination.
2. Designate a 504 Coordinator.
3. Provide grievance procedures to resolve complaints.
4. Provide notice of nondiscrimination in admission or access to its programs or activities. Notice must be included in a student/parent handbook.
5. Identify and locate annually all qualified children with disabilities who are not receiving a public education.
6. Notify annually persons with disabilities and their parents or guardians of the district's responsibilities under Section 504.
7. Provide parents or guardians with procedural safeguards.
8. Hold a "Manifestation Determination" meeting when a pattern of exclusion is demonstrated by 10 or more days cumulative or successive days of suspension.

What are the responsibilities of parents?

1. Share your concerns with the school early, before they become major problems.
2. Be involved in Section 504 meetings concerning your child.
3. Assist in developing appropriate accommodations for your child.

4. Encourage your child to cooperate with school staff and do his/her best.
5. Collaborate with other agencies, such as vocational rehabilitation, when appropriate.
6. Consider mediation or the grievance procedure as options if a difference cannot be resolved with the school.

What are the responsibilities of the student?

1. Be involved in Section 504 meetings, when appropriate.
2. Be familiar with your Section 504/ADA rights at postsecondary programs before graduating from high school. See the following website: <http://www2.ed.gov/about/offices/list/ocr/transitionguide.html>
3. Cooperate and put forth maximum effort at school.

What is the role of the Section 504 Coordinator?

1. The role of the Section 504 Coordinator is to assist the school in meeting requirements under Section 504 of the Rehabilitation Act of 1973.
2. The Section 504 Coordinator will provide resources and help educators and administrators regarding their responsibilities under Section 504. In addition, the Coordinator will assist in creating an ongoing program that will support accommodating students' needs. If you have questions regarding Section 504, call the schools Section 504 Coordinator.

What are the roles and responsibilities of the Department of Education and the Office for Civil Rights (OCR)?

The U.S. Department of Education maintains Regional Civil Rights Offices to enforce Section 504 and other civil rights laws. All parents have the right to directly contact the Office for Civil Rights in Denver, Colorado, if they believe their child is being

discriminated against based on a disability. Most differences with schools can be resolved before contacting the Office for Civil Rights. It is suggested you follow the procedures outlined below:

1. First, try to resolve your differences at the teacher or school level. Set up a meeting to discuss your concerns.
2. If mediation is unsuccessful, set up a meeting with the school's Section 504 Coordinator.
3. If unsuccessful, call the Educational Equity Section (801-538-7647) or the Utah Parent Center (801-272-1051 or 1-800-468-1160) for guidance.
4. If available, ask for mediation. This is a free service for parents. A neutral individual will work with you and the school to help resolve your differences.
5. If unsuccessful and you believe your child has been discriminated against, ask the Section 504 Coordinator how to file a grievance.
6. If this is also unsuccessful, contact the Office for Civil Rights in Denver to express your concerns (303-844-5695, TTY 303-844-3417). See <http://www.schools.utah.gov/equity/Civil-Rights-Information/OCR-Complaint-Form.aspx>
7. In addition to the normal grievance procedure required by Section 504/ADA, Title IX, and Title VI, the U.S. Department of Education has an administrative rule for regulating due process hearings under Section 504.

The Section 504 hearing is to resolve differences involving the education of Section 504/ADA-qualified students with disabilities when such differences cannot be solved by means of a less formal procedure.

The Section 504 hearing is an opportunity to present objections and reasons for these objections to the decisions and/or procedures used by the school under Section 504/ADA.

OFFICE FOR CIVIL RIGHTS (OCR) COMPLAINT PROCESS

Sometimes, even when we do our best, we cannot come to agreement. Every effort must be used to resolve the difference at the school level, including requesting free mediation services. If all else fails, you have the right to file a complaint with the Office for Civil Rights.

An individual person or an organization may file a complaint with the Office for Civil Rights of the U.S. Department of Education. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred.

Anyone wishing to file a formal complaint (i.e., in a letter) with OCR should submit in writing the following information or use the Discrimination Complaint Form available from OCR regional offices:

- ▶ Your name and address (a telephone number where you may be reached during business hours is helpful but not required).
- ▶ A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required).
- ▶ The name and location of the school that committed the alleged discriminatory act(s).
- ▶ A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, sex, disability, or age).

A school may not retaliate against any person who has made a complaint, or who has testified, assisted, or participated in any manner in an investigation or proceeding.

SECTION 504 PARENT/STUDENT RIGHTS IN IDENTIFICATION, EVALUATION, ELIGIBILITY, AND SERVICES

The following is a description of some of the rights granted under Section 504 and other federal regulations to parents of children with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

- 1.** Have your child take part in public education programs without discrimination because of his/her disability.
- 2.** Have the school notify you of your rights under federal law.
- 3.** Receive notice with respect to identification, evaluation, and services for your child.
- 4.** Have your child receive a free appropriate public education. This includes the right to be educated with students without disabilities to the maximum extent appropriate.
- 5.** Have your child educated in facilities and receive services comparable to those provided to students without disabilities.
- 6.** Have your child receive accommodations if he/she is found to be eligible under Section 504 of the Rehabilitation Act.
- 7.** Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district.
- 8.** Examine all relevant records relating to decisions regarding your child's identification, evaluation, and educational services.

9. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
10. Obtain responses from the school to reasonable requests for explanations and interpretations of your child's records.
11. Request amendments of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time and advise you of the right to a hearing.
12. File a 504 grievance if you believe your child has been discriminated against based upon his/her disability.
13. Request mediation regarding your child's identification, evaluation, education program, or services.
14. File a complaint in writing with the:

Office for Civil Rights, Region VIII

U.S. Department of Education

Federal Building, Suite 310

1244 Speer Boulevard

Denver, Colorado 80204-3582

Phone: 303-844-5695

For more information about Section 504, contact:

Utah State Office of Education
EDUCATIONAL EQUITY SECTION
250 East 500 South
P. O. Box 144200
Salt Lake City, UT 84114-4200
801-538-7647 or 801-538-7640

UTAH PARENT CENTER
2290 East 4500 South, Suite #110
Salt Lake City, Utah 84117-4428
801-272-1051 or 1-800-468-1160

UTAH STATE OFFICE OF EDUCATION
UTAH NOTICE OF NONDISCRIMINATION
It is the policy of the Utah State Office of Education that no person shall, on the basis of race, sex, color, national origin, age or disability, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal assistance. Equal opportunity is a priority of the Utah State Office of Education.

The person in your school who is responsible for ensuring compliance with Section 504 is:

Telephone:

The school district Section 504 Coordinator is:

Telephone:



250 East 500 South

P.O. Box 144200

Salt Lake City, UT 84114-4200

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