



**SOMERSET SCHOOLS
AND
SOMERSET BERKLEY REGIONAL HIGH SCHOOL**

**Section 504
of the
Rehabilitation Act of 1973**

A Guide for Families and Students

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 is a federal statute that prohibits discrimination based upon a disability. Section 504 ensures that eligible students receive opportunities and benefits and have equal access to facilities in the same manner as their nondisabled peers. School districts must provide an appropriate education for each eligible student with reasonable accommodations that allow access to the benefits of public education.

Students who are protected under Section 504 must be determined to:

- Have a physical or mental impairment that *substantially* limits one or more major life activity
- Have a record of such an impairment
- Be regarded as having an impairment

Eligibility Criteria

Eligibility for a Section 504 Accommodation Plan is determined using a 3-pronged approach that considers if the student:

- (1) Has a physical or mental impairment ...
- (2) That *substantially* limits ...
- (3) A major life activity.

Eligibility for accommodations under Section 504 will be determined by a Team of people with knowledge about the student. *In order to be considered disabled under Section 504, all three prongs need to accurately reflect the student within the school setting.*

Under Section 504, major life activities are considered as the following:

- caring for one's self
- performing manual tasks
- seeing
- hearing
- eating
- sleeping
- walking
- standing
- lifting
- speaking
- breathing
- learning
- reading
- concentrating
- thinking
- communicating
- working
- bending

When an impairment *does not substantially limit* one or more of the above major life activities, a student does not qualify for classroom accommodations under Section 504. It is important for families and school personnel to have conversations about instructional strategies that are utilized routinely for all students and that meet the needs of diverse learners.

Information from the Office for Civil Rights, based upon the 2008 amendments to the Americans with Disabilities Act (ADA), clarifies that a *temporary impairment* does not constitute as a disability except under certain conditions. Along with the conditions as discussed in the 3-prong eligibility process, the expected duration of the impairment needs to be considered. Through the amendment of ADA, Congress determined that the duration of an impairment expected to last less than 6 months does not constitute a disability.

When considering eligibility under Section 504, it is important to note the following:

- 1) A 504 Plan is not designed to fundamentally alter the program, standards, or what students are expected to know and be able to do.
- 2) A 504 Plan is meant to give all students *equal access* to their program; it is not designed to equalize outcomes or provide advantage

The Eligibility Determination Process

Each school in Somerset has a Section 504 Coordinator. The Coordinator will be responsible to implement the eligibility process. The Coordinator will determine a Team for each student based upon the nature of the suspected disability and the presenting questions regarding the student's needs. A 504 Eligibility Team consists of people who:

- Have knowledge about the student
- Have knowledge about the evaluation data and information
- Have knowledge about accommodations that may be discussed

Step 1. Referral

Who can refer a child for consideration for evaluation under Section 504?

Anyone can refer a child for evaluation under Section 504. However, while anyone can make a referral, such as parents or a doctor, OCR has stated in a staff memorandum that “the school district must also have reason to believe that the child is in need of services under Section 504 due to an impairment” (OCR Memorandum, April 29, 1993). Therefore, a school district does not have to refer or evaluate a child under Section 504 solely upon parental demand. The referral is based upon the school district staff and if they suspect that the child is suffering from a mental or physical impairment which substantially limits any major life activity and is in need of either regular education with supplementary services or special education and related services [letter to Mentink, 19 IDELR 1127 (OCR) 1993]. If a parent requests a referral for evaluation, and the school district refuses, the school district must provide the parent with notice of their procedural rights under Section 504.

Who decides whether a student is qualified and eligible for services under Section 504?

According to the federal regulations: “...placement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, placement options, least restrictive environment requirements, and comparable facilities” [34 C.F.R. §104.35(c)(3)].

Unlike Special Education, the federal regulations for Section 504 do not require or even mention that parents are to be a part of the decision-making committee. The decision to include parents in the decision-making committee is a determination that is made by each school district and should be spelled out in the district’s procedures for implementing Section 504. Parents are encouraged to contribute any information that they may have (e.g., doctor’s reports, outside testing reports, etc.) that would be helpful to the Section 504 committee in making their determination of what the child may need. Schools are expected to make sound educational decisions as to what the child needs in order to receive an appropriate education.

When parents or school staff suspects a student may have an impairment, a written referral must be presented to the appropriate school building

designee. Parents of elementary age students should discuss this referral process with the building principal or his/her designee. At Somerset Middle School the school adjustment counselor and the intervention team. At the High School, parents should contact their child's guidance counselors and the intervention team.

Step 2. Evaluation and Documentation

What information is used in doing an evaluation under Section 504?

Under Section 504, no formalized testing is required. The 504 Committee will look at grades over the past several years, teacher's reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records and adaptive behavior information. Schools must consider a variety of sources. A single source of information (such as a physician's report) may not be the sole information considered. Schools must be able to assure that all information submitted is documented and considered.

Evaluations will be proposed after school personnel review the referral information. Upon receipt of parent consent to conduct the evaluation, the school district has 45 school days to complete the evaluations and hold a 504 Eligibility Meeting. With prior parent consent, the Somerset Public School District and the Somerset Berkley Regional School District will conduct an evaluation that will include school district assessments and review of other relevant information, e.g. grades, review of records, health information, and classroom participation and performance. The evaluation process may include formal testing conducted by school personnel. Evaluations conducted by school personnel will be administered during the school day and may result in the student missing some instructional time.

There are times when families may present to the school district a report from an independent evaluator. Although the Team will consider the findings from independent educational evaluations, the Somerset Public School District and the Somerset Berkley Regional School District reserves the right to conduct our own evaluations.

Should the family wish to present information from outside sources, the following checklist will help ensure that all appropriate information is

available for the 504 Eligibility Team to review at least 2 school days prior to the eligibility meeting.

- _____ Statement regarding the nature of the suspected impairment
- _____ Independent evaluation reports that are current (within one year)
- _____ Professional credentials of the evaluators must be presented
- _____ Relevant educational, developmental and medical history
- _____ Description of how the suspected disability substantially limits the student's ability to learn and/or access his/her school environment (for high school age students, a statement from the student is suggested)

If the parent or guardian disagrees with the school's evaluation, will the school district pay for an outside independent evaluation?

Under Section 504, schools are not required to pay for an outside independent evaluation. If a parent disagrees with the school's evaluation decision, they may request a due process hearing or file a complaint with the Office for Civil Rights. (the district or campus has copies of Notice of Parent and Student Rights Under Section 504 of the Rehabilitation Act of 1973.)

How often will my child be re-evaluated?

While there are no specific time lines on this issue, students must be re-evaluated at least every three years or whenever there is going to be a "significant change in placement." The school's 504 team should re-evaluate your child's plan every year to make sure that his or her accommodation plan is appropriate based on their current schedule and individual needs. The accommodation plan may be revised at any time during the school year if needed.

Step 3. Team Review to Determine Eligibility

The 504 Eligibility Team will schedule a meeting to determine eligibility for a Section 504 Accommodation Plan. All provided assessment reports and information from the variety of sources will be considered by the entire Team. The 3-pronged eligibility criteria will guide the process to determine a student has a disability under Section 504. The Team will be conscious that the impairment may not meet the threshold of a disability under the federal eligibility guidelines as mentioned above.

Questions that the Team will consider at the meeting will include:

1. What is the nature and severity of the impairment?
2. What is the suspected duration of the impairment?
3. How has the student responded to any prior interventions?
4. Does the student consistently need extended time to complete assignments?
5. Does the student consistently need significant changes made to the curriculum and/or physical school environment?
6. Does the student demonstrate consistent behavior difficulties?

Should the 504 Eligibility Team determine a student is eligible for a Section 504 Accommodation Plan, the Team will develop the plan collaboratively. Accommodations included in the Section 504 Plan will:

1. Be considered as necessary.
2. Be determined by the Team.
3. Not be developed to provide advantage.
4. Not fundamentally alter the program, standards, or what students are supposed to know and be able to do.

The Plan will be signed by parents and/or student (age 18 or older) and implemented immediately. All teachers and other school personnel with a “need to know” status will be informed of the accommodations included in the Plan.

Should the Team find the student not eligible for a Section 504 Plan, the Team will encourage the student and family to discuss with the teachers the differentiated instructional approaches that are implemented routinely within the classroom and that may be helpful to the student.

Section 504 Plans are reviewed yearly for accuracy and applicability. Should the student leave the current school parents should be reminded that 504 Plans are often building or environment specific and may need to be reconsidered or evaluated in the new setting.

Can my child be placed under Section 504 without my knowledge?

No. Parents must always be given notice before their child is evaluated and/or placed under Section 504 (34 C.F.R. §104.36). Parents must also be given a copy of their child's Section 504 accommodation plan if the committee determines that the child is eligible under Section 504.

Discipline Questions: Can my child still be disciplined under Section 504?

Yes. Children under Section 504 are still expected to follow the district's student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior if the child is going to be removed from the regular setting for longer than 10 days. This does not mean that a student with a disability cannot be sent to a discipline center or that they cannot go to in-school suspension, or be suspended from school for three days. Very strict guidelines exist for schools in discipline issues with students who have a disability under Section 504. Your campus or district 504 coordinator can assist you in this area should you have additional questions concerning the discipline of students with disabilities. Children having disabilities with behavioral components should have individual discipline plans as well as behavior intervention plans.

What are my rights as a parent under Section 504?

As a parent or legal guardian, you have the right to:

1. Receive notice regarding the identification, evaluation and/or placement of your child;
2. Examine relevant records pertaining to your child;
3. Request an impartial hearing with respect to the district's actions regarding the identification evaluation, or placement of your child, with an opportunity for the parent/guardian to participate in the hearing, to have representation by an attorney, and have a review procedure;
4. File a complaint with your school District Section 504 Coordinator, who will investigate the allegations regarding Section 504 matters other than your child's identification, evaluation and placement.
5. File a complaint with the appropriate regional Office for Civil Rights. For additional information, contact: U.S. Department of Education, Washington, D.C. 20202-1100
(800) 421-3481

504 OVERVIEW

What are the school 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 schools should:

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 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. Conduct a self-evaluation of school district policies, programs, and practices to make sure discrimination is not occurring.

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. Use 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 at Section 504 meetings, when appropriate.
2. Be familiar with your Section 504 / ADA rights at postsecondary programs before graduating from high school.
3. Cooperate and put forth maximum effort at school.

Standardized Tests and Accommodations

MCAS

MCAS is untimed for every student; each student receives as much time as s/he needs within one school day. Other MCAS accommodations will be considered for eligible students on a case by case basis and must be in accordance with the Department of Elementary and Secondary Education *Requirements for the Participation of Students with Disabilities in MCAS*.

The College Board & ACT – High School Students

If a student has a Section 504 Plan, s/he may be eligible for accommodations from the College Board or ACT through their Services for Students with Disabilities. Students wishing to receive accommodations on College Board exams (PSAT, SAT, SAT II, AP) or the ACT must apply and be approved for accommodations by the respective testing agencies. Students interested in applying for accommodations through the College Board must first complete the Consent Form for Request for Accommodations. This form is located in the Guidance Office. ACT applications for accommodations are also located in the Guidance Office.

Please Note: Among other criteria, the College Board and ACT ask the following questions when determining eligibility:

- Does the student have a documented disability? Does the documentation support the specific ways in which this disability impacts the student's daily functioning and ability to participate in the test?
- Does the student frequently request and use the accommodations during his/her school day?
- Has the student been on a 504 Plan for at least four school months?

According to the College Board rules and regulations:

“Note that the use of accommodations in school, or inclusion on an Individual Education Program (IEP) or 504 Plan, does not qualify a student for accommodations on College Board tests.”

College Board Resources

Eligibility and Review:

<http://professionals.collegeboard.com/testing/ssd/application/eligibility-review>

Documentation Requirements:

<http://professionals.collegeboard.com/testing/ssd/application/eligible/requirements>

Basic Requirements for Disability Documentation:

<http://professionals.collegeboard.com/testing/ssd/application/guide/guidelines>

For more information about the process, read the College Board’s, ‘Dear Parent’ letter:

http://www.collegeboard.com/prod_downloads/ssd/Dear_Parent_Letter.pdf

Notice of Parent and Student Rights under Section 504

Parents and students (when age appropriate) will receive written *Notice of Parent and Student Rights under Section 504*. The Somerset Public School District and the Somerset Berkley Regional School District encourage parents to review this document thoroughly.