

SECTION 504 OF THE REHABILITATION ACT **FREQUENTLY ASKED QUESTIONS AND ANSWERS**

CHILD FIND

1. What is a school district's Child Find responsibility under Section 504?

Districts must annually identify and locate all children in the district's jurisdiction who are disabled under Section 504 and notify students with disabilities and their parents or guardians of the district's responsibility under Section 504. This is most commonly done through posting Child Find obligations and evaluation procedures in the district/building enrollment packet, electronic or mailed newsletters provided to families, posted via the district/building website and/or through communication/information to community partnerships.

EVALUATION/REDETERMINATION

2. Who evaluates for Section 504 Eligibility?

The Section 504 committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options such as the Section 504 Coordinator, school counselor or social worker, school nurse, etc.

3. How much information/data is needed to document that a student has a disability?

The amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. It is recommended that the committee gather at least two to three points of data which are provided externally and/or gather internally at the building/district level. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The information obtained from all sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include district/building aptitude and achievement tests, report card and progress reporting, attendance, disciplinary records, teacher observation or recommendations, physical condition, social and cultural background, medical documentation and/or adaptive behavior. Additionally, in evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

4. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with impairment or believed to have an impairment which substantially limits a major life activity or major bodily function. The Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

5. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity/major bodily function.

6. Should students with life-threatening conditions such as diabetes or allergies be considered eligible under Section 504 or does a district health care plan suffice?

Students with life-threatening conditions would meet eligibility under Section 504 based on the medical diagnosis substantially limiting a major life activity/major bodily function. The evaluation team would need to determine if a Section 504 Plan is needed to provide accommodations. With that said, it is important to note that a health care plan would not suffice in supporting students as it does not provide the legal safeguards and protections afforded under Section 504. Additionally, accommodations needed for these types of conditions such as environmental supports, access to health care for diabetes care, epi-pens, etc. should be provided in the Section 504 Plan.

7. When a child is no longer eligible for special education and related services, is he/she automatically eligible for Section 504?

Yes & No. Eligibility under Section 504 depends on whether the child has a current physical or mental impairment that substantially limits one or more major life activities or major bodily functions. The 504 Committee should review relevant data and make the determination if the student requires accommodations or related services decision through a Section 504 Plan. It is important to note that when a student is dismissed from special education, he/she has a record of a disability and is protected by the anti-discrimination provision of 504.

8. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a school district re-evaluates a student and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity or major bodily function, the student is no longer eligible for services under Section 504.

9. Are current users of illegal drugs excluded from protection under Section 504?

Generally, yes. Section 504 excludes any student, from the definition of a student with a disability, and from Section 504 protection, who is currently engaging in the illegal use of drugs when a student acts on the basis of such use. Please note, that there are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs.

10. Are current users of alcohol excluded from protection under Section 504?

No. Section 504's definition of a student with a disability does not exclude users of alcohol.

11. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement?

Periodic review and re-evaluation is required. This should be conducted in accordance with the IDEA regulations, which require an annual review and not more than once a year unless the parent and district/building agree otherwise. It also requires re-evaluation at three-year intervals unless the parent and district/building agree that re-evaluation is unnecessary, or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation. A new Section 504 Plan would be created in MiPSE for an annual and triennial review potentially with updated information/accommodations in support of the students' ongoing individual needs.

12. Would a student be automatically ineligible from Section 504 eligibility and plan if they are experiencing academic success?

No, per the Code of Federal Regulations (2016), "It is critical to reject the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking or speaking." The eligibility team must take into consideration the amount of time, effort, and/or conditions that a student requires when performing a major life activity because of the effects of the impairment even if the individual is to achieve the same or similar result as a student without the impairment. (e.g. consider the time that it takes to complete homework in the evening, complete an assessment/assignment etc.)

PLACEMENT

13. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) and a Section 504 Plan?

When a student meets the requirements under Section 504 and is also eligible for special education programs and services, the student's needs will be supported through an IEP. Since the IEP will include accommodations based on the student's needs, a separate 504 plan is not needed and should not be developed.

14. If the school staff already provides the necessary accommodations for the student with a disability, does the school still have to go through the procedural steps of 504?

Yes. If the student qualifies for 504, doing the accommodations without providing a family with procedural protections is a violation.

15. What are the responsibilities of regular education teachers with respect to the implementation of Section 504 plans?

Regular education teachers must implement the accommodations identified in the plan and document when the accommodation was provided and the result of the accommodation. The school district would be in noncompliance with Section 504 if the teacher fails to implement the Plan.

16. How should the district respond when a teacher fails to implement the accommodations/services specified in a student's 504 Plan?

The student's 504 Plan is required by federal law to be implemented as developed. Should a teacher refuse to implement the plan, the teacher is in violation of federal law, thereby creating potential liability for the district. It is up to each individual district to determine next steps when a teacher fails to comply with a 504 Plan which may result in decreased evaluation status and/or disciplinary action.

17. What is the district's responsibility to transport students under Section 504?

"Under Section 504, a school district is required to offer transportation services in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities." A student should not be denied transportation for which he is otherwise eligible because he is disabled. If the district provides transportation to students who live a certain distance from the school or who must cross a dangerous road to get to school, that service must be offered equally to disabled and nondisabled students who meet the eligibility criteria. Second, even if transportation services are not available to a population of students (because they live too close to school, for example), a disabled student's physical or mental impairment may require the district to provide transportation services so that the disabled student can access education at the school.

18. What sanctions can the Office of Civil Rights (OCR) impose on a school district that is out of compliance?

OCR initially attempts to bring the school district into voluntary compliance through the negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action and may:

- initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or
- refer the case to the Department of Justice for judicial proceedings.

POST-SECONDARY

19. Does a Section 504 Plan from high school transfer to the postsecondary college/career level?

Section 504 ensures that students with disabilities at all educational levels receive equal educational opportunities. It is important to note that students will likely not have the same level of support previously received from school personnel at the college/career level. Additionally, it is most often the student's responsibility to bring a copy of their Section 504 Plan from high school to their postsecondary college and/or career to help advocate for disability support services and appropriate accommodations needed.

20. What is the district/building obligation to keep a copy of the Section 504 Plan?

It is recommended that the district/building, place a copy of the student's most recent Section 504 Plan in the student's CA60 cumulative file and is required per #1602 of the Records, Retention and Disposal Schedule for Michigan Public Schools to keep the Section 504 Plan while the school district is providing services in accordance with the plan and 3 years after the student no longer attends or graduates.

21. What are options for parents who disagree with the Section 504 Evaluation or Plan?

Under Section 504, if a parent disagrees with the proposed evaluation and plan, they have the right to file a grievance with the local school district. A grievance could be in the form of a letter, which spells out the complaints with the 504 Plan. Parents can also file a complaint with the Office of Civil Rights of the United States Department of Education (OCR) within 180 calendar days from the date of discrimination. In the complaint the parent will need to specify the type of discrimination their child suffered based on the student's 504 Plan. It's important to note that parents do not have to file an OCR complaint prior to filing a claim under Section 504 in federal court.