



## PROJECT ACCESS FACT SHEET #53



projectaccess.missouristate.edu  
 projectaccess@missouristate.edu  
 866-481-3841

---

### Section 504 Compliance Update 2017 per OCR

#### **What is Section 504?**

Section 504 is from the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in programs conducted by, receiving funds from, or employed/contracted by Federal agencies. For U.S. Dept. of Education (ED) funded agencies, public schools, 504 is enforced by the Office for Civil Rights (OCR), a component of ED. Each Federal agency, the ED for public schools, has its own set of section 504 Regulations.

Section 504 specifically, created and extended civil rights to people with disabilities providing opportunities for reasonable accommodations in education, employment and various other settings. The ADA Amendments Act of 2008 broadened the interpretation of disability, hence a conforming amendment to the Rehabilitation Act followed that affects the meaning of disability in 504 eligibility. Section 504 and the ADA are antidiscrimination laws that do not provide any type of funding. Separate from IDEA, the statute that funds special education programs.

Section 504 states that no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination and the OCR enforced Section 504 Regulations that apply to public education programs require a school district to provide a “free appropriate public education” (FAPE) to each qualified student with a disability. These Regulations include requirements for reasonable accommodation, program accessibility, and effective communication with provision of regular or special education and related aids and services as needed designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

#### **Who IS part of a Section 504 Team?**

“Group of people knowledgeable about the student, the evaluation data, and the placement options.”

## Who is eligible for Section 504?

504 Plan eligibility is essentially a **Two-step process**:

1. Determine existence of an eligible *disability* under Section 504.
2. Determine what accommodations, if any, a student might need as a result of the *disability*.

**Step 1 existence of *disability* considerations:** (calls for evidence the disability “substantially limits one or more major life activities” and a record of impairment)

- A. Certain conditions are presumed impairments that define a disability under Section 504, without requiring ‘extensive analysis’ or need for further evidence of limiting major life activities.
  - Newly added - dyslexia, other specific learning disabilities, and Attention Deficit Hyperactivity Disorder (ADHD) all 3 types: inattentive, hyperactive-impulsive, combination.

NOTE: OCR’s ADHD guidance confirms automatic disability, “unless there is evidence to the contrary,” a student with an ADHD diagnosis is assumed impaired under 504.

  - Other Physical or Mental Impairments include but are not limited to: contagious and noncontagious diseases and conditions: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, HIV infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- B. When no one is challenging “a public entity’s” (the school’s) failure to provide reasonable modification under § 35.130(b)(7), the evaluation of coverage can be made solely under the “regarded as” prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.
- C. Major life activities include, but are not limited to: (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and (ii) The operation of a major bodily function.
- D. Schools can’t require parents to provide a medical diagnosis for 504 planning consideration/eligibility. If the school feels the diagnosis is absolutely needed, then the district is responsible for the cost of obtaining it.

\*While certain conditions are presumed impairments, a diagnosis alone does not automatically mean a student has a *disability* needing a 504 Plan. An *individualized evaluation* is still a MUST to determine HOW the Disability impacts the particular student in order to determine Step 2.

**Step 2 determination of necessary accommodations considerations:**

- A. An **individualized evaluation** for 504 planning does not always need formal assessments, just information specific to the individual student in regard to HOW the Disability affects his/her participation in “major life” or school activities compared to their non-disabled peers.
- B. An **individualized evaluation** for 504 planning shouldn't require scientific, statistical, or medical evidence (NOT the same as IDEA eligibility determination procedures).
- C. Interpreting evaluation data for placement and accommodation decisions shall:
  - 1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,
  - 2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,
  - 3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and
  - 4) ensure that the placement decisions shall provide education “with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person” for both academic and nonacademic and extracurricular school activities or make available comparable facilities as needed.
- D. **Reevaluation** of students' 504 Plans are required periodically and before a significant change in placement. Here are 6 situations that call for Reevaluation by the 504 Team:  
Periodically, at least once every 3 years but OCR indicates once a year is reasonable in order to review that accommodations are still working and discuss changes or clarify ambiguity,
  - 1) when a student transfers or changes schools,
  - 2) when changes occur that could impact FAPE, essentially if there are new needs that develop
  - 3) before disciplinary action results in significant change in placement, as with an IDEA MDR
  - 4) before nondisciplinary changes in placement such as hospitalization (before 10<sup>th</sup> missed day)
  - 5) prior to exiting student from 504, except for graduation. There are no “self-terminating” 504 plans.

### **Bottom line take-aways:**

- 1 - It is now easier for individuals to obtain protections under 504 Plan/the ADA.
- 2 - Certain conditions are presumed impairments. Parents may be asking schools to do more relating to added conditions presumed impairments; Dyslexia, ADHD, and other Specific Learning Disabilities.
- 3 - Determining disability requires an individualized evaluation. Schools can't require parents to provide a medical diagnosis and OCR has stated a medical diagnosis is Not required, "regarded as" is sufficient with documentation of the impact on the students' access to FAPE.
- 4 - Schools have an affirmative child find duty. OCR's guidance identifies "referral red flags" regarding possible ADHD to add to staff trainings:
  - "considerable restlessness or inattention inappropriate for the student's age and grade level;
  - trouble organizing tasks and activities;
  - communication or social skill deficits."
- 5 - All disability services must be individualized including Section 504 plans, the diagnosis does not guide the modifications/accommodations.

The regulations implementing Section 504 in the context of educational institutions appear at U.S. Department of Education Title 34 Education Subtitle B Regulations of the offices of ED Chapter 1 OCR, ED Part 104 – nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance (34 C.F.R. Part 104)  
<https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

### **Updates considering Title II of the ADA is it relates to the Rehabilitation Act of 1973 and Section 504**

Title II can intertwine with Section 504 and IDEA issues in these 3 new key issues affecting schools now:

#### **1. Service Animals**

- entities may not require a student to provide documentation that an animal has been trained as a service animal.
- service animals must be under control of the handler (either tethered or under voice or signal control at all times)
- districts may ask "Is the animal required because of the disability?" AND "What work or task is the animal trained to perform?"

#### **2. Effective Communication**

-district must take steps to ensure that communication with students with disabilities is as effective as communication with students without disabilities.

-therefore, the district may have to provide auxiliary aids or services for communication not otherwise necessary for FAPE

-AND primary consideration must be given to individual's preferred auxiliary aids or services.

### **3. Accessible Technology**

-Department of Justice (DOJ) Civil Rights Division is currently considering a rule change that would create web accessibility standards for federally funded agencies.

-Although proposed standards are still under consideration, OCR is currently investigating complaints stating the remedy to fix the issue is the WCAG 2.0 AA standard. <https://www.w3.org/WAI/intro/wcag.php>

© Project ACCESS - 2019 \*Project ACCESS is a collaboration among the Missouri Department of Elementary and Secondary Education, Missouri State University, and Missouri's public schools.