

INTRODUCTION

Overview of Section 504

Section 504 of the Rehabilitation Act of 1973, as amended, is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education, such as public schools. Section 504 states that: “No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded for the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” In addition to the anti-discrimination provisions, Section 504 regulations require a school district to provide a “free appropriate public education” (“FAPE”) to each qualified student with a disability who is in the school district’s boundaries, regardless of the nature or severity of the disability.¹ Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met. This means that Section 504 aims to provide students with disabilities an education equal to that of their nondisabled peers. The focus is on leveling the playing field, not just about providing “extra” services and support that students without disabilities do not receive.

Schools meet the requirement to provide FAPE to students when they provide a plan that includes:

- Education services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met;
- The education of each student with a disability with nondisabled students to the maximum extent appropriate to the needs of the student with a disability (i.e., education in the least restrictive environment);
- Evaluation and placement procedures established to guard against misclassification or inappropriate placement of students and a periodic reevaluation of students who have been provided special education or related services; and
- Establishment of due process procedures that enable parents and guardians to receive required notices, review their child’s records; and challenge identification, evaluation, and placement decisions.

The process that the Penn-Harris-Madison uses to ensure FAPE includes referral, evaluation, programming, planning, placement, and reevaluation.

¹ While students can be covered by Section 504’s anti-discrimination provisions if they: (1) have a physical or mental impairment that substantially limits a major life activity; (2) have a record of such impairment; or (3) are regarded as having such impairment, only students who fall under the first prong are entitled to FAPE and accommodation under Section 504. Consequently, these are the students to whom these guidelines primarily apply.

Several Penn-Harris-Madison board policies and administrative guidelines address nondiscrimination due to a student's disability:

- 2260 – Nondiscrimination and Access to Equal Educational Opportunity
- 2260.01 – Section 504/ADA Prohibition Against Discrimination Based on Disability
- 2260.01A – Section 504/ADA Prohibition Against Discrimination Based on Disability
- 2260.01B – Section 504/ADA Complaint and Due Process Procedures
- 5605B – Disciplining a Section 504 Student
- 5517 – Anti-Harassment
- 9160C – Section 504/ADA Complaint Procedures Related to Accessibility of Corporation Facilities

Relationship Between Section 504 and IDEA

A school's requirements and responsibilities and a student's rights under Section 504 are separate from those under the Individuals with Disabilities Education Act ("IDEA"). A student qualifies for special education and related services under the IDEA if his or her disability falls within one of the defined categories of disabilities covered by the IDEA, and the student needs these services to access the general education curriculum. Section 504 is more expansive and requires reasonable accommodations for students who have a physical or mental impairment that substantially limits one or more major life activities. If a student has a qualifying disability under the IDEA, then he or she is also protected under Section 504. Students can, however, qualify for services under Section 504 even if they do not qualify under the IDEA. A flow chart outlining some of the differences between eligibility under Section 504 and under the IDEA is included at **Tab A**.

Definition of Disability Under Section 504

Under Section 504, a person with a disability is anyone who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of having a physical or mental impairment that substantially limits one or more major life activities; or (3) is regarded as having a physical or mental impairment that substantially limits one or more major life activities. As noted above, these guidelines primarily apply to students who fall under the first prong.

Physical or mental impairment means: (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

A physical or mental impairment substantially limits a major life activity for a student if the impairment substantially limits the student's ability to perform a major life activity as compared to the student's non-disabled age/grade peers. There is no single formula or scale that measures substantial limitation. An impairment need not prevent, or significantly or severely restrict, a student in performing a major life activity to be considered substantially limiting.

Major life activities include, but are not limited to, functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

While the determination of whether an impairment substantially limits a major activity is an individualized one that is case specific, given the inherent nature of the following impairments, as a factual matter, they will virtually always be found to impose a substantial limitation, at a minimum, on the major life activity indicated: deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limits musculoskeletal function, autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune functions; multiple sclerosis substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limits brain function.

Physical or mental impairments that are episodic in nature or in remission may constitute a disability for the purposes of Section 504/ADA if the impairment would substantially limit a major life activity when active, such as asthma, allergies, or cancer.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.