



Greater Commonwealth Virtual School

Section 504 of the Rehabilitation Act of 1973

A Guide for Families and Students

8/2024

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 disabled students shall not be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Under Section 504/Title II, school districts must provide students with disabilities a free appropriate public education (FAPE), meaning, eligible students are entitled to receive regular or special education and related aids and services that are designed to meet the individual educational needs of a student with disabilities as adequately as the needs of students without disabilities are met.

The District is obligated to evaluate any student who, because of disability, needs or is believed to need, special education or related services.

Eligibility Criteria

A student is eligible for protection under Section 504 if the student is determined to:

- (1) have a physical or mental impairment that substantially limits one or more major life activities; or
- (2) have a record of such an impairment; or
- (3) be regarded as having an impairment.

Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities, therefore; only the first definition above entitles a student to FAPE. The District must provide services to persons who are eligible under the first category. For the other two definitions, “record of” and “regarded as having”, the District must protect a student from harassment or other discrimination.

Eligibility for services under Section 504 will be determined by a team of people with knowledge about the student, the placement options, and the evaluative data. Students who arrive at GCVS with a 504 Plan from their previous district will have that plan reviewed as soon as they are enrolled. They will then be monitored for a period 10 to 20 school days, depending on time of year and data needed for the assessment, before the team convenes to determine what the student needs to receive a FAPE.

Under Section 504, an appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnosis services). See 34 C.F.R. Section 104.3 (b). Accordingly, more than simply providing as accommodation might be required for FAPE.

The list of major activities under Section 504 includes, but is not limited to, the activities listed below.

Per the American with Disabilities Act Amendments Act (ADAAA), this list also includes “major bodily functions”.

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

When an impairment *does not substantially limit* one or more major life activities, a student does not qualify for regular or special education and related aids and services 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 regardless of whether a student qualifies for a 504 Plan.

When considering eligibility under Section 504, it is important to note that a 504 Plan is meant to give all students *equal access* to their program; it is not designed to equalize outcomes or provide advantage.

Educational plans developed under Section 504 are developed for a particular context.

A Note on the District Curriculum Accommodation Plan (DCAP)

Massachusetts General Law Ch 71 Section 38Q1/2 requires a school district to adopt and implement a curriculum accommodation plan to assist school leaders in ensuring that all efforts have been made to meet students' needs in regular education. The plan shall be designed to assist the regular classroom teacher in analyzing and accommodating diverse learning styles of all children in the regular classroom and in providing appropriate services and support within the regular education program including, but not limited to, direct and systematic instruction in reading and provision of services to address the needs of children whose behavior may interfere with learning, or who do not qualify for special education services under chapter 71B. This plan is known as the DCAP.

As a Commonwealth school, GCVS operates under a certificate issued by the Commissioner of Education. Our current certificate requires us to prioritize the applications of students who are too medically fragile to attend a local school, who have been bullied or who do not feel safe in their local school, or who have a disability. Our DCAP offers accommodations to all students, regardless of disability. We have found the DCAP to be a key element in creating a learning community that is accessible, flexible, and inclusive—which happens to be our mission statement.

DCAP is not a substitute for a 504 Plan. GCVS has an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of DCAP.

The Eligibility Determination Process

The vice principals serve as Section 504 Coordinators (see Appendix A). The Coordinator implements the eligibility process by assembling 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 is a group

of knowledgeable people who draw on information from a variety of sources in order to determine eligibility. The group must have knowledge about the student, the meaning of evaluation data, and the placement options. The group must also be aware of least restrictive environment requirements and comparable facilities.

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, including parents/guardians and doctors.

Under Section 504, the school district must conduct an evaluation of any student who needs or is believed to need special education or related services because of a disability. Therefore, when a school knows about a student's disability, or has reason to suspect a student has a disability, and because of it, needs or is believed to need special education or related services, it would be a violation of Section 504 if the school delays or denies the evaluation.

If a parent requests a referral for evaluation, and the school district does not agree to evaluate the student due to a lack of reason to believe the child is in need of services, the school district must inform the parent of his or her right to challenge the school's decision and provide the parent with notice of their procedural rights under Section 504.

If a parent disagrees with any decisions regarding the identification, evaluation, or educational placement of his or her child, the parent may seek an impartial hearing (often called a due process hearing) that provides the parent with an opportunity to participate and permits representation by an attorney and a review procedure.

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

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

Step 2. Evaluation and Documentation

What information is used in evaluation under Section 504?

Section 504 does not provide a specific amount of time for school districts to complete an evaluation. However, under the IDEA (another federal law that protects students with disabilities), an initial evaluation must be conducted within 60 calendar days of receiving parental consent for the evaluation or if the State has established a different timeframe for conducting the evaluation, within that timeframe. The Office for Civil Rights of the United States Department of Education (OCR) generally looks to the IDEA timeline, or if applicable, to State requirements or local district policy to assess the reasonableness of the time it takes the school to evaluate the student once parental consent has been obtained.

In Massachusetts, under special education regulations, the timelines for evaluation are 30 school days to complete an evaluation and 45 school days to hold a team meeting; therefore, upon receipt of parental

consent to conduct a 504 evaluation, the school district has 45 school days to complete the evaluation(s) and hold a 504 Eligibility Meeting.

The evaluation of a student must be individualized. Although Section 504 does not require a specific process, the standards and procedures must meet certain requirements. Specifically, the evaluation standards and procedures must ensure that:

- Evaluations consist of more than just IQ tests;
- Evaluations measure specific areas of educational need. These could include speech processing, inability to concentrate, and behavioral concerns;
- Tests are selected and administered to the student in a manner that best ensures that the test results accurately reflect the student's aptitude or achievement or other factor being measured, rather than reflect the student's disability, except where those factors are being measured;
- Tests and other evaluation materials are validated for the specific purpose for which they are used; and
- Tests are appropriately administered by trained personnel.

While under Section 504, formalized testing is not required, it may be necessary based on the suspected area of need. In addition to any formalized testing, the 504 Team should look at grades over the past several years, teachers' reports, information from parents/guardians 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 doctor's report) cannot be the only information considered. Schools must be able to assure that all information submitted is documented and considered. 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, GCVS reserves the right to conduct its 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 disability
- Independent evaluation report(s) (may be older than one year, if still considered relevant)
- Professional credentials of the evaluator(s) must be presented
- Relevant educational, developmental, and medical history
- Description of how the suspected disability substantially limits a major life activity of the student and, if necessary, assessment of what is needed to ensure the student has equal opportunity to participate in the school's programs (for high school age students, a statement from the student is suggested).

Step 3. Team Review to Determine Eligibility

The 504 Eligibility Team will schedule a meeting to determine eligibility for a Section 504 Plan. All provided assessment reports and information from the variety of sources will be considered by the Team. The eligibility criteria will guide the process to determine whether a student has a disability under Section 504.

A student is eligible for protection under Section 504 if they are determined to:

- (1) have a physical or mental impairment that substantially limits one or more major life activities; or
- (2) have a record of such an impairment; or
- (3) be regarded as having an impairment

Reminder: Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities, therefore; only the first definition above entitles a student to FAPE. The District must provide services to persons who are eligible under the first category. For the other two definitions, “record of” and “regarded as having”, the District must protect a student from harassment or other discrimination.

If it is determined that a student has a mental or physical impairment that substantially limits one or more major life activities (not limited to learning), the team will then consider the following questions:

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? (see note below)
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 beyond the accommodations provided by the DCAP?
6. Does the student demonstrate consistent behavior difficulties?

Note: The District may not delay an evaluation while waiting for an assessment of whether an intervention mitigates the impact of a disability. Rather, if a district has reason to suspect an impairment that substantially impacts a major life activity, it must evaluate, even if the district suspects that the intervention would assist with the disability’s impact.

Once it is determined that a student is eligible, the Team will develop a plan collaboratively. The Section 504 Plan will:

- 1) Be considered as necessary
- 2) Be determined by the Team
- 3) Not be developed to provide advantage

- 4) Consider a continuum of placement options: an appropriate education for a student with a disability may consist of education in regular classes, regular classes with the use of supplementary services or special education and related services, which could include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic service)
- 5) Provide students with disabilities an opportunity to participate in extracurricular activities that are equal to the opportunity provided to students without disabilities, as required by 34 C.F.R. §§ 104.34(b) and 104.37, and 28 C.F.R. 35.130
- 6) Ensure that the District will not retaliate against individuals who raise concerns about disability discrimination, as is consistent with 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134
- 7) Be signed by parents/guardian and/or student (age 18 or older) and implemented immediately (although signature is not required, it is recommended)
- 8) Be available to all teachers and other school personnel with a “need to know” status; it is the obligation of all staff to implement the regular or special education and related aids and services that a team determines necessary for a student with disabilities to receive a FAPE

Should the Team find the student not eligible for a Section 504 Plan, the Team will encourage the student and parents/guardians to discuss with the teachers the differentiated instructional approaches that are implemented routinely within the classroom and that may be helpful to the student, such as listed in the DCAP. The District must provide parents/ guardians with notice that the student was not found eligible AND a copy of the parent/ guardian right to due process.

Section 504 Plans are reviewed yearly for accuracy and applicability. Should the student leave the current school, parents and guardians should be reminded that 504 Plans are often building or environment specific and may need to be reconsidered or evaluated in the new setting. Students with a 504 Plan will be re-evaluated every 3 years.

Note: A district must also evaluate a student prior to any significant change in placement, for instance, a change to a more or less restrictive environment, with more or fewer supports, as provided in 34 C.F.R. 104.35 (a).

504 FAQ'S

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. Appeal the decision with the District's Section 504 Coordinator, who will investigate the actions regarding Section 504 matters other than your child's identification, evaluation, and placement.

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/guardians 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 (see Appendix A)
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 the student/parent handbook
5. Identify and locate annually all qualified children with disabilities who are not receiving a public education
6. Provide parents or guardians with procedural safeguards
7. Conduct a self-evaluation of school district policies, programs, and practices to make sure discrimination is not occurring

What are the responsibilities of parents and guardians?

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. Collaborate with other agencies, such as vocational rehabilitation, when appropriate

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

If I disagree 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. (Ask for a copy of Notice of Parent and Student Rights Under Section 504 of the Rehabilitation Act of 1973.)

How often will my child be reevaluated?

While there are no specific timelines identified in Section 504, students are reevaluated at least every three years or prior to any "significant change in placement." The student's 504 plan should be reviewed every year to make sure the plan is appropriate based on the student's current schedule, environment, and individual needs. The plan may be revised at any time during the school year if needed.

In addition to reevaluation at least every 3 years and reevaluation prior to a significant change in placement, the District must also reevaluate if the District has information indicating that a student on a 504 Plan is experiencing difficulty accessing the District's programs and activities because of disability, such as that special education or related aids and services are not being used or are not effective, i.e. falling grades) increased absenteeism (particularly where such absenteeism exceeds 10 days), repeated behavioral incidents or disciplinary infractions, or changes in social engagement, in order to determine whether the student's current program is no longer appropriate or is not being fully implemented, as required by the Section 504 regulation at 34 C.F.R. §§ 104.35(a) and (d) and 28 C.F.R. 35.130.

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

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

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. Section 504 requires school districts to conduct reevaluations prior to significant changes in placement.

- An exclusion from the educational program (for example, an out-of-school suspension) of more than 10 consecutive school days is considered to be a significant change in placement.
- A series of short-term exclusions (each 10 days or fewer) from the educational program is considered to be a significant change in placement, if the short-term exclusions total more than 10 school days and create a pattern of removal.
- A school's transferring a student from one type of program to another (for example, from a general education class with pull-out special education services to a self-contained special education class) or terminating or significantly reducing a related service is also considered

to be a significant change in placement

Strict guidelines exist for schools when disciplining a student with a disability under Section 504. Students with behavioral components to their disability should have individual discipline plans as well as behavior intervention plans.

Standardized Tests and Accommodations

The College Board & ACT – High School Students

Students on a Section 504 Plan 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, as well the application for accommodations on the ACT test, can be obtained from one of the Guidance Counselors or the High School Vice Principal. ACT applications for accommodations .

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 4 school months?

According to the College Board rules and regulations:

“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 guardians and students (when age appropriate) will receive written *Notice of Parent and Student Rights under Section 504*. The Great Commonwealth School encourages parents and guardians to review this document thoroughly.

Contacts

Contact Information:

Elementary School: Ms. Sue Powers

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Section 504 provides that no otherwise qualified individual with a disability shall solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The regulations implementing Section 504 require that public schools provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature of severity of the person's handicap. (34 CFR § 104.33).