MONTANA EMPOWERMENT CENTER

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This handout is intended to give parents general information about Section 504, an antidiscrimination law.

Section 504 of the Rehabilitation Act of 1973 (commonly referred to as Section 504), is a federal law designed to protect the rights of individuals with disabilities in programs and activities that received federal financial assistance. Those programs include public school districts, institutions of higher education, and other state and local education agencies.[1]

To qualify under Section 504, a student must have a disability that limits a major life function. The Americans with Disabilities Act Amendments of 2008 (ADA) broadened the definition of disability in the ADA as well as in Section 504.[2]

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504 TIP SHEET

How does Section 504 define disability and major life functions?

"Disability" is defined broadly under Section 504. A student is determined to have a disability if he or she has a physical or mental impairment affecting a body system[3] that substantially limits one or more major life activities including walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, performing manual tasks, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, and more.

When determining whether a student has a physical or mental impairment, the school district must not consider the improvement of a disability caused by a "mitigating measure" such as medication, hearing aids, prosthetics, mobility devices, or other means (the language on mitigating measures was added in the ADA Amendments Act of 2008).

Does Section 504 Require Schools to do evaluations?

The school district must conduct an evaluation in a timely manner when a student needs or is believed to need services because of a disability. The Evaluation will determine if the student has a disability as defined under this act and, if so, whether the student needs accommodations. Based on the documented information from varied sources, decisions must be made by a group of school personnel who are knowledgeable about the child, the meaning of the data, and the placement options. If a school denies a parent's request for an evaluation the school must advise the parents of their right to a hearing to disagree with the district's decision.

What happens if my child is eligible?

Section 504 requires a school district to provide a "free appropriate public education" (FAPE) to each eligible student in its jurisdiction, regardless of the nature or severity of the disability. Under Section 504, an appropriate education for a student with a disability could consist of education in a regular classroom, education in a regular classroom with supplementary services, or special education and related services. A child who has a disability but does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA)[4] may still be entitled to services or accommodations under Section 504.

The school must provide a plan for providing reasonable accommodations and other services so a child may participate fully in the school setting. Parents are usually invited to a meeting where the plan is developed. Putting the plan in writing is an effective way to document what services the school will be providing.

What are the accommodations under Section 504?

When the school determines that a child is eligible for services under Section 504, the school must eliminate barriers to his or her access to full participation in school activities, including the general education curriculum. The school often includes the provision of accommodations for a student. Accommodations must give the child the meaningful equal opportunities, consider his or her functional limitations and offer alternative methods of performance. Examples of accommodations include testing in a quiet room, preferential seating, digital textbooks, tailored homework assignments and a sign language interpreter for a track meet.

What responsibilities do schools have under Section 504?

To provide proof that they do not discriminate, schools must designate an employee to ensure compliance, to provide grievance procedures, identify and locate all children with disabilities who receive education within the district, and provide notice of the district's Section 504 responsibilities and procedural safeguards to parents.

The district also must give parents a copy of procedural safeguards within the school district. Procedural safeguards include the parents right to:

- Receive notice of action regarding identification, evaluation and placement of their child with a disability
- Review records
- Request an impartial hearing
- Have a review procedure

What if there appears to be a violation of Section 504?

Section 504 complaints in Montana are investigated by the Office for Civil Rights in Seattle.
See www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt for more information.
Complaints must be filed withing 180 days of the discrimination.

LEARN MORE:

To learn more about this subject or to request a Section 504 evaluation, parents are encouraged to call their school district's Section 504 coordinator. Parents may also request a copy of the district's 504 policy including grievance procedures if they do not agree with the district's implementation of Section 504. Information about how Section 504 applies to educational institutions can be found in 34 CFR 104 (80).

Information from the Montana Office of Public Instruction regarding Section 504 can be found at *www.opi.mt.gov/Educators/School-Climate-Student-Wellness/Special-Education/Dispute-Resolution/Section-504*

Information about disability discrimination from the Montana Human Rights Bureau can be found at *www.erd.dli.mt.gov/human-rights*

Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools *www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf*

Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities *www2.ed.gov/about/offices/list/ocr/504faq.html*

1 Section 504 also covers non-education programs such as public parks, post offices, the courts, and vocational rehabilitation services.

2 "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools," www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html.

3 The code of Federal Regulations (CFR) defines a physical or mental impairment as "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; genitor-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." This list is meant to be comprehensive but not exhaustive. The full citation is 34 CFR 104.3(j)(2)(i).

4 "Frequently Asked Questions About Section 504 and the Education of Children with Disabilities," www2.ed.gov/about/offices/list/ocr/504faq.html

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