SECTION 504 QUESTIONS AND ANSWERS

##### What is Section 504?

The statute was intended to prevent intentional or unintentional discrimination against persons with disabilities, persons who are believed to have, are regarded as having, or have a record of having disabilities. Section 504 was enacted to “level the playing field” – to eliminate impediments to full participation by persons with disabilities. OCR’s regulations recognize that, in order to provide individuals with disabilities the same opportunities as others, it may be necessary to provide additional services.

This legislation protects the civil rights of people with disabilities, i.e., physical or mental impairments that substantially limit one or more major life activities. It prohibits organizations that receive federal funds from discriminating against otherwise qualified individuals on the sole basis of a disability. Section 504 of the Rehabilitation Act of 1973 is enforced by the U.S. Department of Education, Office for Civil Rights (OCR) under their guidelines. Title II of the Americans with Disabilities Act (ADA) and the related Amendments Act (ADA AA), applicable to all public educational institutions, provide comparable protections.

###### How does Section 504 define “disability?”

Under Section 504, a person is considered a person with a disability if they meet one of the following criteria:

1. has a physical or mental impairment, which substantially limits one or more major life activities,
2. has a record of such an impairment, or
3. is regarded as having such impairment.

Note: Criteria 2 and 3 do not trigger the school district’s obligation to provide a free appropriate public education (FAPE). Consequently, the district has no duty to identify, assess, or place students who qualify only under these criteria.

The term “disability” includes a broad range of disabilities and impairments; as such, there is no exhaustive list. Additionally, determination in favor of a disability should not demand extensive analysis.

##### What is a “physical or mental impairment?”

The regulations of Section 504 define the terms as:

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; and endocrine; or
2. any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, attention deficit disorder, and specific learning disability.

##### What is a “major life activity?”

Major life activity means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, concentrating, reading or thinking. This list is **not** exhaustive. The term includes those basic activities that the average person in the general population can perform with little or no difficulty. A number of bodily functions are considered major life activities, such as functions of the immune system, digestion, neurological functions, respiratory functions, and brain functions.

Major life activities include functions such as:

Caring for oneself

Performing manual tasks

Seeing

Hearing

Eating

Sleeping

Walking

Standing

Lifting

Bending

Speaking

Breathing

Learning

Reading

Concentrating

Thinking

Communicating

Working

**How does the Americans with Disabilities Act, Amendments Act (ADA AA) affect the Section 504 eligibility process?**

The ADA AA addresses the “substantial limitation” aspects of Section 504 eligibility. Congress directed that the definition of disability should be interpreted and applied broadly. This list of impairments is not exhaustive. Specifically, the Act directs the following:

* An impairment need not severely or significantly restrict a major life activity to be considered substantially limiting – i.e., interpret the term loosely.
* An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
* The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, hearing aids, etc. Furthermore, the eligibility committee cannot consider the use of assistive technology, reasonable accommodations, auxiliary aids or services, or learned behavioral or adaptive neurological modifications. Ordinary eyeglasses and contact lenses are not included in this provision.

**What are “mitigating measures” and how do they affect the 504 process?**

**Mitigating measures defined:** Mitigating measures include interventions such as medication, hearing aids, or other devices or practices which serve the purpose of reducing the impact of the identified condition. The positive effects of IAT fall within this category. They also include learned behavioral or adaptive neurological modifications. Exceptions to the mitigating measures rule are ordinary glasses and contact lenses. Students who use these latter devices to successfully correct their vision may be found ineligible under Section 504 if they have no other identifiable needs.

**Mitigating measures and eligibility:** Schools may not consider the effects of mitigating measures when determining the existence of a potentially disabling condition. Committees must examine the degree of limitation on a major life activity, estimating the impact of the disabling condition as if the mitigating measure were not in effect. In many instances, it will be helpful to review the student’s records to estimate his or her functioning prior to the onset of medication or other mitigating measure.

**Mitigating measures and plan development:** A student may be determined to have a disabling condition and be considered eligible for the non-discrimination protections of Section 504, but may not necessarily require accommodations or services in order to have equal educational opportunity. Although committees may not consider mitigating measures in determining the existence of a disability, they may consider the effects of mitigating measures when determining the need for a Section 504 plan. Thus, students with disabilities may qualify for the nondiscriminatory protections provided by Section 504, but may not require an accommodation plan if there are mitigating measures which sufficiently lessen (ameliorate) the effects of the disability. Section 504 Committees should reconvene at least annually to discuss these students.

###### What is a “substantial limitation”?

Neither Section 504 nor its regulations define the term “substantial limitation.” OCR has ruled that the phrase is to be defined by the school district consistent with the intent and language of the ADA AA. The ADA AA clarifies that the definition of “substantial limitation,” and all aspects of the definition of “disability,” shall be construed in favor of broad coverage; that “substantial limitation” should be interpreted loosely.

###### When does a student qualify under Section 504?

The decision regarding whether or not to identify a student under Section 504 is made on a case-by-case basis. The Section 504 Committee reviews each student’s individual information to determine whether there is a physical or mental impairment that substantially limits a major life activity. The committee considers the nature and severity of the impairment, its duration or expected duration, and the long-term impact of the impairment on the student’s opportunity to access and benefit from programs and activities offered by the district. If the student is eligible and receiving special education and related services, the student is eligible under Section 504; however, the student’s IEP satisfies the district’s Section 504 obligations.

###### What is the Section 504 Committee?

Each school has a committee which is knowledgeable about the requirements of Section 504 and which operates under the direction of the principal, or designee. When the committee makes decisions particular to an individual student, persons who are knowledgeable about the student, who have expertise in the area of suspected disability, and who have expertise in interpreting data, are included as members. The membership may consist of the principal or designee, the child’s general education teacher, specialists, or other personnel deemed appropriate by the principal. The committee’s purpose is to process referrals, review assessment information, determine eligibility, and develop plans for the students under Section 504.

###### Does Section 504 require assessments?

Yes. However, “assessment” does not necessarily mean a “test” or “formal testing.” Under Section 504, it refers to gathering data and/or information from a variety of sources so that the Section 504 Committee can make the required determinations. Depending on the type of suspected disability, common sources of assessment data are grades, attendance records, health information, standardized test scores, teacher comments, observations, parental and student input, previous eligibility components, medical reports, disciplinary referrals, etc. A determination of a disability should not require extensive analysis. However, if the committee determines that individually administered formal testing is necessary, parental consent is required prior to administering such tests to the student. Testing should be specific to the concern. In many cases, a Section 504 formal assessment is narrower in scope than an IDEA assessment, focusing only on the area(s) of concern.

###### When parents/guardians request Section 504 evaluations and plans, the first step is to determine whether the student has a qualifying impairment. For problems with reading, learning, concentration, or thinking, a comprehensive evaluation through IDEA may be appropriate if it is believed that the student may have a disability that requires special education services to benefit from an education. However, a student can be determined to be eligible for Section 504, and receive accommodation/services, if appropriate, while being evaluated for special education.

###### What about private psychological or psycho-educational diagnoses and evaluations?

###### Occasionally, parents/guardians consult with professionals outside of the school system prior to bringing their concerns to the attention of staff. In these instances, the individual school should assist and facilitate the receipt of this information into the appropriate referral process (e.g., IAT, Section 504 Screening or Student Study Committee).

###### Eligibility determinations (for Section 504 or IDEA) are not made solely on the basis of information collected in private evaluations. Rather, the information provided should be reviewed by the appropriately qualified school staff who will assist the Section 504 or Student Study in determining what additional information, if any, is needed. All information provided by parents/guardians should be considered along with a variety of other sources of data. Moreover, while any recommendations contained in private evaluations will be considered by the committee, determinations of eligibility, accommodations, and services are made by the 504 Committee or IDEA Team.

**Do teachers submit information for teams to consider as part of the Section 504 process?**

For Section 504 screenings and re-evaluations, teachers are asked to complete a teacher report form. This information is requested from a student's teachers prior to the meeting and supports the team with necessary classroom based information about a student’s academic, behavioral or other functioning. Teachers are to submit their reports in advance of the meeting.

**Can parents receive copies of the teacher reports in advance of the meeting?**

If requested, parents may receive copies of completed teacher report forms in advance of the Section 504 screening or re-evaluation meeting.

**What role do classroom interventions play in the assessment process?**

When a student is having difficulties participating in some aspect of the academic program, it may often be appropriate to implement short-term classroom interventions. If these interventions significantly reduce or eliminate the difficulties, then a referral based on suspicion of a disability is likely not necessary. Conversely, if the student continues to struggle or requires the continual implementation of interventions over time, it is appropriate to refer the student to either the Section 504 or IDEA process for evaluation and determination of eligibility.

Additionally, if any information exists (such as information provided by a parent/guardian) that suggests the suspicion of a disability, the student should be promptly referred for consideration under either Section 504 or IDEA. Schools should avoid using the IAT forum or informal interventions for prolonged periods due to risk of delaying the identification of a student with a disability.

###### What is a Section 504 Plan?

A Section 504 Plan is a legally binding document that falls under the provisions of the Rehabilitation Act of 1973. It is designed to assist an eligible student by setting out the services the student will need in order to participate in the regular or general education program. A 504 plan is not the same as an Individualized Education Plan. Students receiving special education and related services through an IEP are not provided a Section 504 Plan because the IEP should address the student's related or supplementary needs (including any needed for regular education). The IEP will satisfy the district’s obligations under Section 504.

**How are Accommodations and Modifications Different?**

Students eligible for Section 504 may also be eligible for accommodations and services. Unlike modifications, which typically occur for students with IEPs and involve changes to the curriculum, accommodations provide adjustments to how things are done. Services are those things that are added to accommodate the effects of a disability (e.g., transportation for a student in a wheelchair).

Accommodations are provisions made in how a student accesses/demonstrates learning. Accommodations provide students with equal access to learning, provide students with equal opportunities to demonstrate what they know, are based on individual strengths, and may vary in intensity and degree. Accommodations do not substantially change instructional level or content.

Modifications are changes in what a student is expected to learn and demonstrate, and may include specialized instruction. Modifications provide for changes in the instructional level or benchmark, changes in the number of key concepts mastered within a benchmark or unit of study, and changes in content/curriculum.

**What are some common accommodations or services under Section 504?**

Depending on the nature of the disability, a student covered by Section 504 might need testing accommodations (e.g., extra time on tests and/or a reduced-distraction environment in which to take them), extra time on homework assignments, preferential seating, note taking assistance, written instructions for homework, assignments broken into smaller tasks, adaptive technology and classroom equipment (e.g., word processors), textbooks and other written material in alternate formats, extra time to get to classes, or services such as sign language interpreters, transportation, or health-related services. Accommodations and services are intended to give the student an equal opportunity to participate in the general education program. If a student requires a modified or reduced curriculum or other specialized instruction considered by the district to be special education, then the student should be served under an IEP.

**What if all the students in the class are receiving accommodations?**

A teacher might decide to give all the students in a class extra time on tests or other assistance that might otherwise be considered an accommodation or service under Section 504. Nevertheless, if an eligible student in the class requires the aid or service because of a disability, that aid or service should be included in a Section 504 Plan regardless of how other students are treated. This will ensure consistency in the continued delivery of the services and provide the parents/guardians with due process protections should the classroom teacher or the district decide to change or eliminate the previously provided accommodations or services that were provided to all students.

**How are students’ needs related to medical diagnoses addressed? What are “care plans,” “health care plans,” and “health alerts”? How are they different from 504 Plans?**

Students with health conditions sometimes require a treatment or emergency plan to be implemented in the school setting. School nurses work with parents/guardians and school staff to ensure that the medical needs of such students are met. A document that reflects the student’s medical needs is developed by the school nurse in conjunction with parents/guardians, physicians or other appropriate service providers, teachers, school administrators, and other school staff pertinent to the concerns (such as cafeteria workers). Such document, frequently called a “health care plan,” “health alert,” or similarly worded document, is maintained in the student’s health records and is shared with school staff who interact with the student, with parental permission, on an as-needed basis. Many students with asthma, diabetes, allergies or other conditions have such plans, which are considered to be a specific type of 504 Plan. Having been developed by a group of persons knowledgeable about the student, the condition, and available services, this process is consistent with Section 504 requirements. Copies of the APS Section 504 Rights and Procedural Safeguards document (Form 504 C) must be provided to the parent/guardian of students with such plans, regardless of whether they are further referred to the Section 504 committee. If at any time, a student with a health care plan or health alert is thought to require accommodations or services beyond those provided through the document, (s)he should be referred to the Section 504 Committee.

Students with medical conditions that are considered to be potentially life-threatening, even if well-managed by medication or in remission, are candidates for screening by the school-based Section 504 Committee. These students may be referred for screening, regardless of their academic functioning, and parents/guardians should be informed of their rights under Section 504. Examples of this include students with diabetes, severe asthma, severe allergies, auto-immune disorders, etc.

Furthermore, a student’s health issues, even when not life-threatening, may have an academic impact or may affect the student’s ability to participate in classroom or other school activities. In such cases, a 504 committee may need to develop a more extensive 504 accommodation plan so that classroom teachers can make allowances, adjustments, or modifications to their classroom or their instruction. The existence of a health condition, in and of itself, does not necessitate the development of a 504 plan. However, under Section 504, a student with a health care plan is entitled to all of the non-discriminatory protections of that statute.

Parents/guardians of students with health care plans and health alerts should be informed of the referral process and their rights under Section 504. Likewise, any staff member who is aware of a student with a health condition that could be a disability under Section 504 should refer the student to the 504 Committee for screening. If there are attendance issues related to illness or treatment, and/or difficulties participating in school activities (academic or extra-curricular) due to poor physical stamina, limited strength, or impaired mobility, students should be referred for screening.

Students who have dietary restrictions due to religious reasons or parental preference may have a health alert or similar documentation provided to staff by the clinic. However, such a communication is not a 504 Plan and does not provide the student with the same procedural protections as a 504 Plan.

**What about students who are diagnosed with psychiatric conditions?**

Schools must be vigilant and thorough when considering student eligibility due to disabilities. For students who are diagnosed with psychiatric conditions, particular care must be undertaken to consider their school-related needs. Some of these students have strong academic histories, but also experience significant difficulties attending and participating in school due to psychiatric conditions and/or treatment thereof. School staff must be open to considering whether the student should be evaluated for special education due to their emotional needs. Many times, students whose psychiatric condition has resulted in hospitalization will require more than an accommodation plan in order to receive a free appropriate public education (FAPE). They may require case management, modification/reduction of assignments, modified school day, and special placement during the school day in order to sustain their academic progress or otherwise participate in school activities. Such services are delivered through special education identification under the IDEA, if the student qualifies. However, if the student can participate in the general education curriculum with services and accommodations, the student should be referred to the school-based Section 504 committee.

Occasionally a student experiences a significant psychiatric event and is diagnosed with a condition, but then responds readily to treatments. Students who seem to be well on the path of recovery, who are developing coping skills, and who are able to begin to be self-advocates may be good candidates for Section 504 plans as they return to full participation in school. However, care must be taken so that Section 504 eligibility is not inadvertently used to delay potential special education services. If the Section 504 Committee wishes to refer the child to the Student Study Committee, the child can be served under Section 504 while the Student Study process is occurring.

###### Can a temporary or episodic impairment qualify a child under Section 504?

A temporary impairment may constitute a disability for purposes of Section 504 if it results in a substantial limitation of one or more major life activities for a significant period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment, the extent to which it actually limits a major life activity of the affected individual, and the impact of the impairment on the student’s ability to participate in the district’s education program. Even when an impairment does not qualify as a disability (e.g., a broken arm that is expected to fully heal within 6 weeks), staff should generally provide assistance; however, it should be made clear to the parent/guardian that the services are not being provided under Section 504.

For students with episodic conditions, or conditions in remission, the determination of eligibility should be made as if the condition were in full effect. In some cases, a non-permanent or episodic impairment may have a significant impact on a student’s education. This must be determined on a case-by-case basis.

###### What about a child who could get straight A’s if s(he) received Section 504 program?

While there may be a genuine belief that the student is not performing at his/her potential, perceived underachievement is not, in itself, sufficient reason for referral and assessment. There must be some reason to believe that the student has a physical or mental impairment that substantially limits a major life activity. The 504 committee is charged with examining the overall functioning of a child in areas such as behavior, attendance, academics, and concentration, among others. Grades should not be the only evidence of lack of educational benefit, nor should good grades be considered enough to show that a student doesn’t have a disability. Activities both academic and nonacademic should be considered when determining eligibility.

###### Can a student have a disability under Section 504 if (s)he is doing well academically?

###### Yes. A student might be getting good grades and otherwise be doing reasonably well in class *despite* his/her disability. The student may only be doing well because of the extraordinary effort and time (s)he spends on schoolwork or an unusual amount of help provided by his parents/guardians. For instance, while most of the students in the class might spend an hour on homework each night, the student might be keeping up only by spending considerably more time. If there is information indicating that this might be due to a disability, then the student should not be penalized for his/her extra effort and should be screened for potential further action under Section 504 or IDEA.

**If a student has a Section 504 Plan, are accommodations for state standardized testing provided?**

If a student is scheduled to take one of the standardized state assessments such as the Standards of Learning assessments and the student has testing accommodations listed on the Section 504 Plan as part of the general education instructional program, then accommodations for the state assessment programs should be considered by the Section 504 Committee. Testing accommodations are only provided to give the student an equal opportunity to demonstrate achievement, not an increased advantage to obtain a better score.

###### What if a parent/guardian refuses testing accommodations?

If the school recommends that testing accommodations be included, but the parent/guardian refuses, then (s)he should be requested to provide (preferably in writing) a statement that (s)he is declining testing accommodations and that (s)he understands the possible implications for his/her child. These might include the student’s ability to earn a standard or advanced diploma.

###### Can the Section 504 Committee ensure accommodations to ACT/SAT/AP exams?

No. If a student is qualified under Section 504 and the Section 504 Plan lists testing accommodations as part of the general education instructional program, parents/guardians can request that a school release information to the testing program that governs the ACT/SAT/AP or other such exam. The testing organization will make an independent determination of whether modifications to college entrance/credit exams will be allowed. If there is a requirement for assessment data, it is the responsibility of parents/guardians to obtain that data. APS holds no responsibility to provide assessments in order for students to apply for accommodations on tests administered by other entities.

Understandably, a student who receives testing with accommodations in the school setting seems a more likely candidate to receive modifications on college entrance/credit exams. Likewise, the longer the student has received such accommodations, the more likely s(he) is to receive them on the entrance/credit exam. However, as previously stated, the testing organization makes all final decisions regarding accommodations on their exams.

**Do Section 504 Plans transfer from a K-12 school system to college?**

No. Colleges and other postsecondary institutions do not automatically accept Section 504 plans from K-12 schools. Contact the college or university of interest to learn about how they support students with disabilities.

**What are the district’s obligations to provide evaluations for students leaving APS to enter the postsecondary setting?**

APS is not required to provide evaluations for graduating students who have received accommodations or services through a 504 Plan. Section 504 committees do, however, meet at least annually to discuss the appropriateness of a student’s plan. For high school students, this yearly review is also an opportunity to discuss post-secondary considerations with families.

Students and their parents/guardians are encouraged to familiarize themselves with the protections Section 504 offers in the college or other postsecondary educational setting. The Office for Civil Rights in the U.S. Department of Education enforces Section 504 and Title II of the ADA, which apply to virtually all public and private colleges, universities, and vocational schools. Their website, www.ed.gov/ocr, offers helpful information and resources.

Parents/guardians and students over the age of 18 have the right to request copies of their educational records, which may be helpful in seeking accommodations in college.

**Is there a formal transition process under Section 504 for students who are graduating?**

While there is no provision under Section 504 for transition, school teams and/or parents may schedule a Section 504 meeting to discuss a student’s transition to post-secondary opportunities. Section 504 committees do, as a matter of course, meet at least annually to discuss the appropriateness of a student’s plan. For high school students, this yearly review is also an opportunity to discuss post-secondary/transition considerations with families. The Section 504 plan is written specifically to address the students’ needs within APS. APS cannot dictate needs/accommodations that are appropriate at the post-secondary level.

**What should a parent/guardian do if they think that the school is not implementing a student’s Section 504 Plan?**

The parent/guardian should present the information that suggests that the Section 504 Plan is not being implemented to the school Principal at the elementary level, and to the Director of Counseling at the Secondary level. The Principal/ Director of Counseling will look into the concern and take appropriate action. If the concern is not resolved at the school level, either party may refer the concern to the Section 504 Compliance Officer, per APS Section 504 Rights and Procedural Safeguards.

###### Can a student be exited from Section 504?

Yes, with notice to the student’s parents/guardians of the change in eligibility status and the procedural safeguards. Once a student no longer meets eligibility requirements, the Section 504 Committee can exit the student from the Section 504 Program with notice of procedural safeguards to the parent/guardian. As with the initial eligibility determination, this is a collaborative effort between school staff and parents/guardians. Furthermore, the 504 Committee making the determination of eligibility must be comprised of a group of persons qualified to do so, according to the student’s unique needs and the current placement. That is, membership of the committee completing the reevaluation process parallels that of the group who made the initial placement decision. The 504 Committee must have available to it information that is both sufficient and recent enough to provide an understanding of the child's current functioning. The committee may request assessments if needed, or may make decisions based on available information. Any information provided by parents/guardians will be considered by the committee.

**How do students transition from Individualized Education Plans (IEPs) to Section 504?**

Students being exited from an Individualized Education Plan may be eligible for Section 504. If, at any time, the IEP team believes that a student no longer requires an IEP, but may require Section 504 supports, IEP teams may transition in to a Section 504 Screening meeting, as long as someone knowledgeable about Section 504 participates in the meeting. Separate meetings are not required when a student is exiting from Special Education and being considered for Section 504. Many team members are on both teams. All Section 504 paperwork should be completed. All IEP team members should remain for the Section 504 process. If a separate meeting is to be scheduled, the IEP team lead will notify the building administrator responsible for Section 504 oversight. The building administrator will coordinate the scheduling of the meeting.

**What is the district’s duty to serve students under Section 504 when placed by their parents/guardians in private or home schools?**

Once the district has offered the student a free appropriate public education, it has no duty under Section 504 to provide educational programs to students not enrolled in the public school program based on the personal choice of the parent/guardian. Parents/guardians retain the right to refer their child to a Student Study Committee if they suspect a disability.

**Does APS implement Section 504 plans for students who enroll already on a plan?**

If a student enrolls in APS who is already being served on a section 504 plan, a section 504 screening meeting should be scheduled. The Section 504 coordinator assigned to the school should be invited, as well as any other appropriate staff. In the interim (i.e., while waiting for the screening meeting to be scheduled), the plan should be implemented to the extent possible. The screening meeting should occur within twenty business days, during the school year.

###### What procedural safeguards are afforded to parents/guardians and adult students?

In Arlington Public Schools, parents/guardians, and students age 18 or older, have the right to:

* notice of proposed actions related to eligibility and/or a plan or program;
* consent to the initial assessment and initial placement of their child;
* have an assessment that considers information from a variety of sources;
* have a committee knowledgeable about their child, the nature of the suspected disability, and assessment procedures that determine eligibility;
* examine all relevant records of their child, challenge that information and consent to the release of information;
* periodic reassessments, including a reassessment before any significant change in placement;
* have their child educated in the least restrictive environment;
* appeal a decision to the Section 504 Compliance Committee;
* request an impartial hearing over disagreements and be represented by counsel in the hearing;
* appeal the impartial hearing officer’s decision to court;
* file a complaint with the Office for Civil Rights; and
* a manifestation determination subsequent to any disciplinary action that results in a significant change of placement.

Note: These procedures can be used to challenge an identification, evaluation or placement decision.