

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

## What Is Section 504?

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Section 504 of the Rehabilitation Act of 1973 is a federal law. This law makes it illegal for public schools to discriminate against children with disabilities. Specifically, Section 504 states that "No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his 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..."<sup>1</sup>.

The law applies to individuals with both physical and mental disabilities. Examples in which schools may have discriminated against a child with a disability include, but are not limited to:

- Excluding a child with a disability from participating in educational services, such as classes, field trips and school-sponsored clubs.
- Not providing accommodations to a child with a disability that would help him or her be a part of regular school activities, such as providing a wheelchair ramp, allowing extra time on tests, and providing a sign language interpreter.

Section 504 requires that children with disabilities receive a free and appropriate public education. This means that your child's public school must provide regular *or* special education, along with related services and supports that meet the following requirements:

- Your child's education must be designed to meet his or her educational needs as adequately as the needs of children without disabilities are met<sup>2</sup>.
- Your child must be educated in the regular educational environment with the necessary supplementary aids and services unless he or she cannot be educated in a satisfactory way in the regular environment<sup>3</sup>.

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<sup>1</sup> 29 U.S.C. § 794 (2015)

<sup>2</sup> 34 C.F.R. § 104.33 (2000)

<sup>3</sup> 34 C.F.R. § 104.34 (2000)

In a school setting, children with a disability who do not qualify for special education services under the Individuals with Disabilities Education Act (IDEA), may still qualify for a reasonable accommodation under Section 504.

For example, a child with AIDS may not have a disability according to the IDEA, but would have a disability under Section 504. So, if the child needed a reasonable accommodation, such as having extra health-related absences because of his or her disability, Section 504 would allow for the reasonable accommodation.

### **What is a Section 504 plan?**

A Section 504 plan is a written document that ensures that students who have a disability will receive reasonable accommodations from their school district for accessing a free appropriate public education.

For example, a school district could write a 504 plan for a child with cancer stating that the child may exceed the usual allowable number of absences during the school year as a reasonable accommodation as long as the absences are health-related.

Another example of a child in need of 504 accommodations might be a child with attention-deficit hyperactivity disorder (ADHD) who needs additional time to take tests. That child's school might write a 504 plan that allows him or her extra time to complete tests.

### **Who is eligible for a Section 504 plan?**

To be eligible for a Section 504 plan as a child with a disability, your child must

- Have a physical or mental impairment that substantially limits one or more major life activities;
- Have a record of that kind of impairment; or
- Be regarded as having that kind of impairment<sup>4</sup>.

Major life activities include learning, working, walking, hearing, speaking, breathing, doing manual tasks, and caring for oneself<sup>5</sup>.

### **How is a Section 504 plan created?**

Every school district is required to have a 504 Coordinator<sup>6</sup>. This person may or may not be the Special Education Director for the school district. The 504 Coordinator

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<sup>4</sup> 34 C.F.R. § 104.3(j) (2000)

<sup>5</sup> 34 C.F.R. § 104.3(j)(2)(ii) (2000)

<sup>6</sup> 34 C.F.R. § 104.7(a) (2000)

is responsible for ensuring that 504 evaluations and plans are written for students who need them<sup>7</sup>. If you think your child may need a 504 plan, you will need to contact the 504 Coordinator in your school district. You should contact this person in writing. You may wish to write a letter asking for your child to be evaluated or you may be able to supply the coordinator with your child's medical records.

If you do not have medical records or if other information is needed, the school district must assist you with the necessary evaluations. School districts must follow certain procedures for evaluations and re-evaluations. They must also draw from a variety of sources in the evaluation process<sup>8</sup>.

After the evaluation process, if your child is eligible for a Section 504 plan, a meeting will be held to develop one.

### **Who attends the 504 plan development meeting?**

Section 504 regulations only require that a group of people who are “knowledgeable about the child” decide what services and placement the child will receive under the 504 plan<sup>9</sup>. Even though the law does not say that parents must attend a 504 plan development meeting, because parents are knowledgeable about the child, they will probably attend. Other people who may attend could include the child's teacher, an administrator, counselor, etc. It might resemble an Individual Education Program (IEP) meeting. (See “Individual Education Program” materials.)

### **What happens at the 504 plan meeting?**

At the meeting, the participants will discuss any issues they believe a 504 plan can address as well as what reasonable accommodations will be necessary to address the issues.

For example, a child who has attention-deficit hyperactivity disorder (ADHD) and is easily distracted in the classroom, may need an environment with fewer distractions. The participants may suggest that the child be seated at the front of the room so that the teacher can be near him while teaching.

### **What if the school does not follow the Section 504 plan?**

If the school does not follow the Section 504 plan and the student has been discriminated against because of his or her disability, the following remedies may be considered:

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<sup>7</sup> 34 C.F.R. § 104.35 (2000)

<sup>8</sup> 34 C.F.R. § 104.35(c)(1) (2000)

<sup>9</sup> 34 C.F.R. § 104.35(c)(3) (2000)

- Filing a complaint with the school district's Section 504 Coordinator.
- Filing a complaint with the Office for Civil Rights.  
For more information about this process see "How to File a Complaint with the U.S. Department of Education Office for Civil Rights" materials.
- Filing for a due process hearing.  
For more information about this process see "How to File a Due Process Petition with the Nebraska Department of Education" materials.
- Filing a lawsuit in federal district court.  
You may wish to contact Disability Rights Nebraska or a private attorney to assist you with this process.

### Section 504 & IDEA Comparison

|  | Section 504  | Individuals with Disabilities Education Act (IDEA)   |
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| Free Appropriate Public Education (FAPE) | Required   | Required   |
| Evaluations                              | Required:<br>Must be drawn from a variety of sources.<br>Must have established procedures.<br>Must ensure placement decision is made by a group of people who know about child, know what the evaluation data means, and who know about placement options.<br>Must ensure that child is placed with peers without disabilities to the maximum extent possible. | Required:<br>Must be drawn from a variety of sources.<br>Must have established procedures.<br>Must ensure placement decision is made by a group of people who know about child, know what the evaluation data means, and who know about placement options. (The child's parents must be included).<br>Must ensure that child is placed with peers without disabilities to the maximum extent possible. |
| Re-evaluations                           | Required "periodically"  | Required at least every three (3) years  |
| Least Restrictive Environment            | Required   | Required   |
| Individualized Education Plan (IEP)      | Written plan recommended (504 Plan)  | Required   |

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| Procedural Safeguards | <p>School districts must:</p> <p>Designate an employee as a Section 504 Coordinator.</p> <p>Provide a grievance procedure that incorporates appropriate due process standards.</p> <p>Annually identify and locate all children with disabilities in the school district who qualify for services under Section 504.</p> <p>Provide parents or guardians with procedural safeguards, including notice of their rights, an opportunity to review relevant records, an impartial hearing, and review procedure.</p> | <p>School districts must:</p> <p>Provide a grievance procedure that incorporates appropriate due process standards.</p> <p>Annually identify and locate all children with disabilities in the school district who qualify for services under IDEA.</p> <p>Provide parents or guardians with procedural safeguards, including notice of their rights, an opportunity to review relevant records, an impartial hearing, and review procedure.</p> <p>Child has a right to a due process hearing.</p> |
| Nonacademic Services  | <p>Along with the Americans with Disabilities Act, (ADA), students must be given an equal opportunity to participate in athletics, school health services, recreational activities, special interests, and employment.</p>  | <p>A school district must provide students with special education, related services, and supplementary aids and services to enable them to participate in extracurricular and other nonacademic services.</p>  |
| Program Accessibility | <p>The school district must operate each program or activity so that it is readily accessible.</p>  | <p>A school district must provide specially designed instruction to a child to ensure that he or she can access the general education curriculum.</p>  |

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| Discipline | <p>A school district may not expel or suspend a student with a disability for more than 10 days during the school year for conduct related to the student's disability.</p> <p>If the conduct was <b>not</b> caused by or directly related to the student's disability, the school district can expel him or her and does <b>not</b> have to provide educational services to the student while he or she is expelled.</p> <p>If the student is in possession of drugs or weapons or if he or she has assaulted someone causing "serious bodily injury" the school district <u>may</u> suspend or expel the student regardless of their disability.</p> | <p>A school district may not expel a student with a disability or suspend the student for more than 10 days during the school year for conduct caused by or directly related to the student's disability.</p> <p>If the conduct was <b>not</b> caused by or directly related to the student's disability, the school district can expel him or her, but it <b>must</b> provide educational services to the student while he or she is expelled.</p> <p>If the student is in possession of drugs or weapons or if he or she has assaulted someone causing "serious bodily injury" the school district <u>may</u> suspend or expel the student regardless of their disability.</p> |
| Remedies   | <p>Exhausting administrative remedies is <b>not</b> required.</p> <p>File a complaint with the school district's Section 504 coordinator.</p> <p>Complaint to the Office for Civil Rights.</p> <p>Due process hearing.</p> <p>Filing a lawsuit in federal district court.</p>  | <p>You <b>must</b> exhaust administrative remedies before filing a lawsuit in court.</p> <p>Complaint to the Nebraska Department of Education.</p> <p>Complaint to the Office for Civil Rights.</p> <p>Due process hearing.</p> <p>Filing a lawsuit in federal district court.</p>   |