

Note Regarding Revisions:

In 2008, the Americans with Disabilities Act was amended and included a conforming amendment to Section 504. This document has been revised accordingly, with revisions made pursuant to current guidance. The DISD Board Policy has been similarly revised / updated. Revisions are indicated by a vertical line as seen on the left side. For more information, the reader is invited to review the following website:

<http://www.ed.gov/about/offices/list/ocr/504faq.html>

What criteria are used to determine § 504 eligibility?

Like other students, those students with a 504 eligible disability are entitled to a free appropriate public education. An appropriate education for a Section 504 disabled student may require the provision of specific accommodations and related services in order to meet the needs of the student. Section 504 focuses on assuring access to educational services and the learning process that is equal to that given students who do not have disabilities.

For a student to qualify for Section 504 protection the student must meet three criteria. The three criteria are

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

It is important to understand that **all three criteria** must apply to a student before that student is eligible for Section 504 protection. In addition, this disability must be why the student cannot equally access or receive benefit from the school's programs and services. Here is additional detail on each of the three criteria.

(1) Mental or physical impairment (a) has a record of such an impairment or (b) is regarded as having an impairment:

This might include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. Additionally, this can include any mental or psychological disorder. This criterion does not limit eligibility to specific diseases or categories of medical conditions. The law was intentionally written this way so that the range of diseases or medical conditions that might be considered for Section 504 eligibility is not limited.

(a) "Has a record of such an impairment" means that a person has a history of, or has been misclassified (by a recipient of federal funding) as having a mental or physical impairment that substantially limits one or more major life activities.

(b) "Is regarded as having an impairment" means that an individual has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient (of federal funds) as constituting such a limitation; or has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment.

A student meets the requirement of being "regarded as" having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of 6 months or less.

Thus, in the case of “has a record of” and “is regarded as having” individuals receive Section 504 protection, not necessarily because they have a qualifying disability, but to protect them from being injured by the prejudice or stereotypic attitudes of others. Schools have no obligation to identify these students or provide them with a Section 504 plan. However, schools are prohibited from discriminating against them in all programs and activities.

Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being “regarded as” disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such

(2) Substantially limits:

Section 504 does not specifically define the term “substantially limits”. The basis for evaluating this criterion is on the impact a disability has on one or more of a student’s major life activities. It is vital to understand that for a student to qualify the impairment must impose an important and material limitation to one or more major life activities at the current time. The eligibility team will consider the nature and severity of the disability as well as how long the disability is expected to last. **Simply having a condition or disability does not automatically qualify a student for Section 504 protection.** The condition must present a barrier to the student’s ability to access the same educational opportunities as that afforded a non-disabled student or a substantial limitation does not exist.

OCR does not endorse a single formula or scale that measures “substantially limits” – rather, the determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination. [copied from the Department of Education FAQ on 504 on August 17, 2009]

The team may also consider what factors have been taken to mitigate the impairment and its actual impact on the student on a day-by-day basis. The team may consider the manner, conditions, and duration in which a student performs the task in comparison to how non-disabled students perform the same task.

(3) Major life activities:

*** This section revised.*

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activity” also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The team should consider that although reading is identified as a major life activity, not every student identified as having dyslexia, or dyslexic tendencies, would automatically qualify as needing 504 protection. Refer again to the “substantially limits”

How is a Section 504 student review request made?

A parent, guardian, teacher, student study team, counselors, related service providers, other school staff and administration, and/or community agencies can initiate a Section 504 review request. In DISD, the Problem Solving Team (PST) will meet to consider the request.

What is the process for reviewing Section 504 eligibility?

The District expectation is that every school in DISD convenes the Problem Solving Team (PST) whose purpose is to investigate the needs of students who demonstrate a pattern of academic failure or other significant needs. The Problem Solving Team (PST) conducts a preliminary review to determine the nature of the student's need. If it is determined that the student should go through a 504 eligibility meeting then appropriate staff meet and conduct the meeting.

As mentioned above a student is eligible for Section 504 protection when it is determined that he or she has a physical or mental impairment that substantially limits one or more major life activities. A properly convened eligibility team will include individuals knowledgeable about the needs of the student, the data being reviewed, and appropriate accommodation options. This team can include parents/guardians, teachers, PST members, counselors, related service providers, other school staff and administrators, and staff from community agencies.

Parents/guardians should be included in this process whenever possible. The team's role is to review the nature of the student's impairment determining how it affects educational access. If the team determines that the impairment does limit a major life function then the team will construct a Section 504 plan that outlines the necessary student accommodations.

Section 504 eligibility meetings are not intended to be as comprehensive as a special education evaluation. However, in every case the eligibility team needs to investigate the specific concern that triggered the student review request. Information that might be considered includes (but is not limited to) grades, attendance reports, behavior plans, review requests, cumulative file information, psychological evaluations, medical information observations, and standardized testing information. The eligibility team may administer and use other formal and informal measures as deemed necessary.

Are there any impairments which automatically mean that a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504

Are there situations when it is inappropriate to offer a Section 504 accommodation plan?

Yes! Eligibility for 504 is always decided by evaluating and determining that all three criteria are present. The student must have a mental or physical impairment. That mental or physical impairment must be substantially limiting. The impairment must substantially limit one or more major life activities. If any of the three criteria is missing or if there is no impact on the student's access to school programs or services because of the disability do not create a 504 plan for the student. Keep in mind that while a 504 plan might not be appropriate; other kinds of accommodation plans may be appropriate. Here are some of the common misuses of the 504 review request process.

- A parent and/or doctor presents the school with a disability diagnosis and a 504 plan is written without first determining if the disability causes significant impairment of a major life activity.
- A student is placed on a 504 plan solely because the parent wants the student to have additional time on college qualifying examinations (e.g. ACT, SAT).
- A student is automatically placed on a 504 plan after being identified as having dyslexia or demonstrating dyslexic tendencies. When determining 504 protection for students with dyslexia, the SST must still consider whether the impairment substantially limits one or more major life activities. Often, it is possible to provide interventions for dyslexia which do not require 504 protection. Additionally, students who are afforded 504 protection are expected to take the TAKs assessments.
- A student fails to qualify for special education support and is automatically signed up for a 504 accommodation plan without first qualifying them based on Section 504 criteria.
- A student is automatically placed on a 504 plan when the student no longer qualifies for special education services without first qualifying them based on Section 504 criteria, which are different.
- A student is placed on a 504 plan as an alternative way to receive special education services because the parent refuses to "label" a student by including them in a special education program.