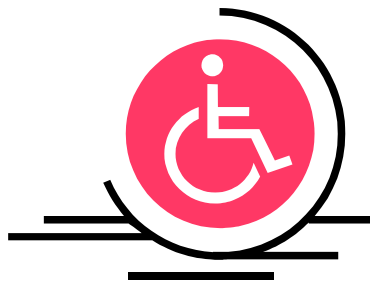


Maine School Administrative District 46

Section 504 Parent Handbook



Special thanks to Eric Herlan for giving his permission to use parts of Sections II, III, IV, V, and other information from his publication Section 504 and Your School, 1998, Drummond Woodsum & McMahon, PO Box 9781, Portland, ME 04104-5081 (207)722-1941

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I. What is Section 504?

Section 504 is one part of the federal Rehabilitation Act of 1973. Section 504 bars discrimination against persons with disabilities in the services and programs that are administered by any entity that receives federal funds.

Section 504 of the Rehabilitation Act provides in part as follows:

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....

[29 U.S.C. Sec. 794(a)]

II. Who Qualifies for coverage under Section 504?

Both Section 504 and the ADA offer specific protections for “qualified individuals with a disability.” To be covered under these laws, therefore, there must be a finding that the person is an individual with a disability” and that the person is “qualified” in the area in question.

Who is an “individual with a disability”?

There are three categories under which a person may qualify as an individual with a disability. In the context of schools, the first of those areas may impose affirmative obligations to provide services and accommodations. In the second and third areas, the law works primarily as a prohibition of negative actions against the affected individual. The three covered categories are:

- (a) a person who has a physical or mental impairment which substantially limits one or more of such person’s major life activities;
- (b) a person who has a record of such an impairment; or
- (c) a person who is regarded as having such an impairment.

[29 U.S.C. § 706(8)(B), 42 U.S.C § 12102(2)]

Usually schools encounter students with actual, current impairments who are seeking specific services and accommodations. A person with a “history” of an impairment may include a student who once had cancer, but no longer does. In that situation, of course, the school could not discriminate against the student based upon the fact that he once had a particular disability. A person who is “regarded” as having an impairment could include a student who is severely scarred from burns. The

condition does not substantially limit his or her life activities, yet may be perceived by others as creating a disability. The school could not take negative actions against the student based on such perceptions. [34 C.F.R. §104 App. A(a)(3)]

The school's affirmative obligation to provide a student with special accommodations in their educational program is generally limited to those who actually have a current physical or mental impairment that substantially limits a major life activity despite ameliorating supports. There will not usually be a duty to provide special accommodations or services for those who are simply regarded as, or have a history of such an impairment. In those situations, Section 504 bars negative conduct by the school against the student based on the perceptions or history of a disability. In making decisions about a student in such a situation, the law more narrowly precludes any reliance upon the student's past history or the perceptions of a disability; it does not require that actual accommodations be provided.

1. Physical or mental impairment.

The governing regulations define 'physical or mental impairment' mostly by example. Physical impairments are understood as "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more" of the listed body systems. [34 C.F.R. § 104.3j)(2)(i)] Mental impairments are "any mental or psychological disorder," with a number of listed examples, including specific learning disabilities. [id.] Regulatory guidelines State that the term 'specific learning disabilities' should have the same meaning as under the Individuals with Disabilities Education Act. [id. § 104, App. A(a)(3)]

The Equal Employment Opportunity Commission ("EEOC") has provided some guidance on the category of mental impairment under the ADA, which would likely be persuasive authority under Section 504 for student issues. Those guidelines note that the DSM-IV manual is a relevant source in determining whether a condition is a mental impairment. The guidelines also note, however, that not all conditions in the manual would constitute mental impairments. For example, an individual who is currently using drugs is not protected under either the ADA or Section 504, although that condition could constitute a mental impairment in the DSM-IV manual. [42 U.S.C § 12210; OCR Senior Staff Memorandum, 17 EHLR 609 (OCR1/28/91)]

Traits, such as lateness, irritability, or poor judgment are not in and of themselves mental impairments, but they may be linked to mental impairments. Furthermore, environmental, cultural and economic disadvantages are not impairments under Section 504. Prison records, age, or homosexuality are also not considered impairments. Obesity is generally not a disability under these laws, but severe obesity defined as more than 100% over the norm – could be considered an impairment. [Cook

Courts across the United States have disagreed in the past on whether we assess the person with or without ameliorating medications or other supports when making a determination of whether he or she has a physical or mental impairment, or whether the impairment substantially limits a major life activity. In 1999, the Supreme Court ruled that people should be assessed with ameliorating supports, such as medication. If the impairment is actually corrected by some mitigating factor, it does not substantially limit a major life activity.

This ruling is relevant in the case of students with an identified Attention Deficit Hyperactivity Disorder (“ADHD”). In assessing whether that student qualifies as disabled under Section 504, the school must view the student with any ameliorating medications such as Ritalin. If medication controls symptoms and allows the student to access programs, the student does NOT qualify for services under Section 504.

2. Substantially limits

In most circumstances, the question of whether a student has a disability will focus on the issue of whether an identified physical or mental impairment *substantially limits* a major life activity. That is, the student may very well carry a legitimate diagnosis. What will be less clear is how severe that condition is -- whether it substantially limits a major life activity.

In the employment regulations of the ADA, we find a definition of that term which is of help on this question. Those regulations, at 28 C.F.R. § I63O.2(j), state that “substantially limits” means

- (i) Unable to perform a major life activity that the average person in the general population can perform; or
- (ii) Severely restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

The same regulation then lists the following factors to be considered in that determination:

- (i) The nature and severity of the impairment;
- (ii) The duration or expected duration of the impairment; and
- (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

[See also: FEP Manual 405:7251, 7252 (EEOC 1995)]

It is difficult to generalize about the length of time that an impairment must substantially limit a major life activity. Guidance by the EEOC states that an impairment is “substantially limiting” if it lasts more than several months and severely restricts the performance of one or more major life activities during that time.

One example of a short term condition that was not substantially limiting in the eyes of the EEOC was an individual depressed by the end of a romantic relationship, when the depression lasts about a month or so, even though the individual may be diagnosed as having an “adjustment disorder.” The EEOC has noted that a person with a broken leg usually would not be considered disabled under the law, since the healing time is normally no more than a few months. Yet if it were to take 11 months to heal, the condition would likely be substantially limiting. In this regard, that Agency has stated:

Although very short-term, temporary restrictions generally are not substantially limiting, an impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities if they are severe. [FEP Manual at 7252]

3. Major life activities

The law defines major life activities as functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. [34 C.F.R. § 104.3(j)(2)(ii); 25 C.F.R. § 35.104] Yet the list is not supposed to be considered exhaustive of all possible major life activities.

When is a student a “qualified” individual with a disability?

Section 504 is not an affirmative action law. It does not require that persons who are unqualified for particular activities be permitted to participate in those activities nevertheless. Instead, the law prohibits discrimination only against *qualified* persons with disabilities. The key question, therefore, is how does Section 504 define whether a person is qualified?

In Maine, a person with a disability is qualified to participate with or without accommodations in public school educational services if that person is of school age, up through the school year in which the person turns 20, or until he or she earns a diploma, whichever comes first. As will be discussed later, this standard applies only to educational services.

Most extracurricular activities such as sports and drama, would not likely be considered educational services. In that circumstance a student with a disability would not be qualified to participate in the service unless he or she met the “essential eligibility requirements” for the activity, with or without reasonable accommodations [Id. Sec. 104.3(k)(4); see also OCR Senior Staff Memorandum, 17 EHLR 1233 (OCR Jan. 3, 1990)]

What Procedures are Required to Identify and Serve Section 504 Students

The law and regulations say very little about the procedures a school unit must have in place to manage its Section 504 obligations. One point very clearly stated in the regulations is that the procedural requirements of Section 504 can always be met through compliance with the procedural requirements of IDEA. [34 C.F.R. § 104.36] Thus, compliance with the notification, time lines, evaluation, and documentation requirements of IDEA would establish compliance with procedural requirements of Section 504. So, procedures for serving children under Section 504 will be similar to procedures for serving children with disabilities under IDEA, the special education law. You will be notified in advance of meetings, have a statement of your rights under Section 504 sent to you and explained to you if you request it. You will receive minutes of 504 team meetings and a copy of your child’s accommodation plan.

The grievance procedure for a person wishing to challenge a 504 team decision is at the back of this handbook.

Evaluations

When a school believes that a student may, as a result of a disability, need special education or related services (aids and services necessary for a student to attend regular education classes), the school unit must conduct a pre-placement evaluation of the child. [34 C.. F.R. 104.35(a)] Any such evaluation that the school conducts must be at no cost to the parents. [Williams Letter, 21 IDELR. 73, 77 (OCR 6/14/94)] If the family requests an evaluation and the school refuses to undertake it, the family must be notified of its right to request a hearing to review the evaluation issue. [Veir Letter, 20 IDELR 864, 866 (OCR 12/1/93)]

The evaluations must review areas of educational need, and not just cognitive levels, and must measure accurately whatever is intended to be measured. [34 C.F.R. § 104.35(b)] The procedures must include a process for “periodic re-evaluation” of students who have been provided special education and related services. [34 C.F.R. § 104.35(d)] The law does not require triennial evaluations as special education law does.

Once such evaluative data has been obtained, decisions about the student’s placement in a regular or special education program must be made “by a group of

persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.”

Very importantly, any time the school is considering a “significant change” in the student’s educational placement, the school is supposed to draw upon this same team process and rely any evaluations that may be necessary to make the decision. [34 C.F.R. § 104.35(a)] There is no requirement for annual Team meetings, but meetings of that frequency would seem to be prudent.

What must schools provide to a student identified under Section 504?

A free appropriate public education.

For any student identified as disabled under Section 504, the local school unit has a duty to provide that student with a free appropriate public education (“FAPE”), which may be met through the regular or special education systems. When the regular education system provides FAPE, a 504 plan would contain only modifications and accommodations necessary for the student to participate in the regular education program.

In any event, the Section 504 Team must give consideration to the individualized needs of the student to determine what may be required for him or her to access a free appropriate public education. We would expect that a disabled student under Section 504 would have a right to an educational program reasonably calculated to provide educational benefit, and for students in a primarily mainstream program, that obligation will often be met if the student is obtaining passing marks and advancing from grade to grade.

504 plans need not aim at maximizing the student’s potential, and no program is a guarantee of success. Yet “educational benefit” cannot be de minimis; it must be calculated to provide “demonstrable improvement” relative to the student’s disability.

Please bear in mind, however, that students who require special education in order to benefit from their school program will most likely qualify for an IEP under federal and state special education law.

Programming in the least restrictive setting

As with IDEA, the local school unit must provide those “supplementary aids and services” that are necessary for a student to be educated with non-disabled students to the maximum extent appropriate. In non-academic settings as well, the school unit must ensure that students with disabilities participate with non-disabled students to the

maximum extent appropriate. (These services are often considered to be “accommodations” by local school unit).

For disabled students who disturb the classroom, however, it appears that schools would be entitled to remove such children to a more restrictive setting for their education. As noted in the official commentary to the Section 504 regulations: “Where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate.” [34 C.F.R. § 104, App. App. A, n.24] As with IDEA, the determination of whether the disabled student will significantly impair the learning of others must factor in the provision of supplementary aids and services to the disabled child in the regular education setting.

Non-academic services

Local school units provide many more services to students than just an education. For example, schools provide library services, transportation services, recreational services, nursing services, food services, and many more. The law requires that the local school provide all such non-academic services in such a manner as is “necessary to afford handicapped students an equal opportunity for participation in such services and activities.” [34 C.F.R. § 104.37(a)]

Discipline Rules under Section 504

Short-term removals

For students identified only under Section 504, schools are permitted to suspend those students for 10 school days or less without calling prior 504 Team meetings, without determining if the student’s behavior was a manifestation of his or her disability, without doing evaluations, and without providing any alternative services. The discipline in question, however, must be consistent with the discipline that would be imposed on non-disabled students in similar circumstances.

Long-term removals

Suspensions or expulsions of longer than 10 school days in length are considered a “significant change in placement” and would require a prior 504 Team meeting to determine if the misconduct at issue were related to the student’s disability. If it were related, programming and further removal for the student would have to be addressed through the 504 Team meeting process, draw upon evaluative data, and be calculated to address the student’s educational needs. If the misconduct were not related to the disability, the school would be free to impose the same disciplinary consequences as are

used for non-disabled students in similar circumstances, without any obligation to provide alternative services during the removal period.

Calculation of days

Under IDEA it appears that the short-term removal is limited to 10 cumulative days in the school year. Under Section 504, however, a significant change of placement usually will occur only for removals of more than 10 *consecutive* days in the school year. Yet the Office for Civil Rights has also made clear that a series of repeated, short-term removals of less than 10 consecutive days in the school year together can constitute a significant change in placement, requiring a prior 504 Team meeting. The determination of whether the series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors considered in making this determination are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

Drug and alcohol offenses

In the event that a Section 504 student is found to be currently engaging in the illegal use of drugs or in the use of alcohol and to have violated school policies on the use or possession of drugs or alcohol, the District may disciplinary action against that student to the same extent and degree as the District would undertake for students who are not disabled. The District is not required to have a prior 504 Team meeting, need not determine if the use or possession is related to the student's disability, and need not provide any alternative services during any removal that may be ordered for the use or possession violation, as long as such a consequence is consistent with school policy for non disabled students.

Obligations under Section 504 in extracurricular activities

General principles

As noted earlier, a disabled student is qualified to participate in non-academic services at the elementary or secondary levels if he or she meets the essential eligibility requirements for the receipt of such services."

The regulations under Section 504 specifically address school obligations in the context of athletics and other extracurricular activities. Yet these provisions are analogous to what is noted above: If the student meets the essential eligibility requirements for the activity in question, with or without reasonable accommodations, the school has an obligation to permit the student to participate on equal terms as the non disabled student, and must provide those necessary accommodations at no cost to the student.

The obligation to provide reasonable accommodations.

Whether a student with disabilities meets the essential eligibility requirement for sports or other nonacademic services will often require an assessment of whether reasonable accommodations would permit the student to meet those standards. That is, schools must consider potential reasonable accommodations when determining whether the essential eligibility requirements are met.

Most disputes regarding students with disabilities in a nonacademic or sports setting at school revolve around whether requested accommodations would be reasonable and necessary for the school to provide. On this point, courts have made it clear at least since the Supreme Court's ruling in Southeastern Community College that schools need not provide accommodations that would either (i) result in a "fundamental alteration" in the nature of the activity, or (ii) would result in an "undue financial burden" for the school [See Southeastern Community College, 99 S. Ct. at 2369, 2370; see also OCR Senior Staff Memorandum, 17 EHLR1233 (OCR Jan. 3, 1990); *id.* at § 35.130(b)(7) (public entities)] The Office for Civil Rights has stated that covered entities face an undue financial burden only "after consideration of all resources available for the program or activity." [OCR Senior Staff Memorandum, 17 EHLR at 1234]

The federal regulations provide some help in defining what types of services might be considered a reasonable accommodation or a necessary auxiliary aid or service under the ADA and Section 504. Examples of auxiliary aids and services given in the ADA regulations include qualified interpreters note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices....[28 C.F.R. § 35.104(1)] The list also includes readers, taped texts, the acquisition or modification of equipment or devices, and "other similar services and actions." [id. § 35.104(4)]

For public entities like schools, the ADA regulations make clear that the duty to accommodate may extend as well to offering modifications in the school's policies and practices:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service program or activity. [28 C.F.R. § 35.130(b)(7)]

Specific rulings in the area of sports and extracurricular activities

Courts have upheld age limits for sports team participation, upheld the limits on the number of semesters a student could participate in athletics, upheld minimum GPA for LD students, denied participation on the high school golf team to a student who failed to meet the requirement that he pass at least four one credit courses during the

previous semester, supported a college's decision not allow a student to play basketball with a heart condition that posed a risk of death during play. The student was not "otherwise qualified," and playing college basketball is not a major life activity. A student with one kidney was allowed to play based on expert medical advice that his protective gear eliminated risk. Courts have noted that there is always some risk for serious injury or death for non disabled students who participate in athletics.

More specific information is provided in Eric Herlan's publication Section 504 and Your School: What You Need to Know and Why. It can be obtained from Drummond Woodsum & MacMahon, PO Box 9781, Portland, ME 04104-5081; Telephone (207) 772-1941.

Attachments: Eligibility form
504 Accommodation Plan form
Parent/student rights
Grievance procedures

NOTICE PARENTS/STUDENTS RIGHTS

(Section 504 of the Rehabilitation Act of 1973)

The following is a description of the rights granted by the Rehabilitation Act (Section 504) to students identified as disabled under that law. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disability;
2. Have the school district advise you of your rights under federal law;
3. Receive notice from the school with respect to identification, evaluation, educational program or placement of your child or the filing of a due process hearing;
4. Have your child receive a free appropriate public education. This includes the right to be educated with non-handicapped students to the maximum extent appropriate. It also includes the right to have the school district make reasonable

accommodations necessary for your child to benefit from his or her educational program

5. Have your child educated in comparable facilities and receive comparable services to those provided non-disabled students;
6. Have your child receive special education and related services if your child is found to be eligible under the Individuals with Disabilities Education Act or under Section 504 of the Rehabilitation Act,
7. Have evaluation, educational, and placement decisions based upon a variety of information sources, and made by persons familiar with the student, the evaluation data, and placement options;
8. Have your child receive an equal opportunity to participate in extra-curricular school activities;
9. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement
10. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records;
11. A response from the school district to reasonable requests for explanations and interpretations of your child's records;
12. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time, and advise you of the right to a hearing;
13. File a grievance through local grievance procedures, file a complaint with the federal Office for Civil Rights, or request an impartial hearing on decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Questions about how to request a hearing may be forwarded to
14. Have the decisions made by hearing officers or others reviewed In state or federal court;
15. Information concerning low-cost or free legal counsel.

The person in this district who is responsible for assuring that the district complies with Section 504 is the SPECIAL SERVICES DIRECTOR, 7 Main St, Dexter, Phone 924-7669. This notice is available in large print and on audio tape from the Special Services office.

**Maine School Administrative District 46
Special Services**

NOTICE OF NONDISCRIMINATION

M.S.A.D. 46 does not discriminate on the basis of race, age, color, national origin, sex, religion, or physical or mental disability in admission to, access to, treatment in or employment in its programs and activities. The following person has been designated to handle inquiries regarding the nondiscrimination policies:

Lester Butler, Superintendent of Schools
10 Spring St
Dexter, ME 04930
Phone: 924-5262

Inquiries concerning the application of nondiscrimination policies may also be referred to the Regional Director, Office for Civil Rights, U.S. Department of Education, S.W. McCormack POCH Room 222, Boston, MA 02109-4557.

GRIEVANCE PROCEDURE

1. Parent or guardian files an appeal.
2. The district schedules a hearing before an impartial hearing officer and provides the parent/guardian with a written notice of the hearing which sets out the time, date, and place of the hearing. They are also advised of the right to participate and to be represented by an attorney.
3. The hearing is conducted in an informal and non-adversarial manner. Rules of Evidence and Procedures do not apply. The district will make an audio tape of the complete hearing and no written transcript is required. Parents may obtain a copy of the audio tape at a small cost.
4. The hearing officer will render a brief written decision at the conclusion of the hearing. No written findings of fact or conclusions of law shall be required of the hearing officer. The hearing officer need not be an attorney but shall be familiar with the requirements of Section 504.

MSAD 46 Section 504 Grievance Officer is Alan Smith, Principal, Dexter Middle School, 62 Abbott Hill Rd. Dexter, ME 04930 Phone: 924-5571 FAX: 924-7668

**Maine School Administrative District 46
Special Services
504 ELIGIBILITY DETERMINATION**

Name: D.O.B. Date of meeting:

School: Grade:

Case manager:

Members and participants:

To be eligible for services, modifications, and accommodations under Section 504, a student must be a "qualified individual with a disability." He or she must have a physical or mental impairment which substantially limits a major life activity. Students' level of impairment is viewed WITH ameliorating supports. (Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long term impairments of indefinite duration may be disabilities if they are severe). [FEP Manual at 7252]

1. The physical or mental impairment is:

Documenting information and evaluations:

2. The impairment substantially limits the following life activity and is expected to be substantially limiting for more than several months. We are viewing the student WITH ameliorating supports, including medications. The limited major life activity is:

- (a) The student is unable to do this activity: ___yes ___no
- (b) With ameliorating supports considered, the student must do this activity in a manner substantially different from an average person in the general population. The differences are:

3. The student is otherwise qualified to participate in the program in question:

The program is:
Qualifications are:

DETERMINATION:

