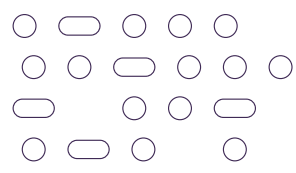
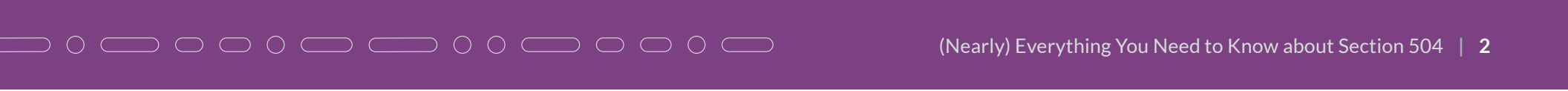


[eBook]

(Nearly) Everything You Need to Know about Section 504



Section 504 was a great step forward for equity in education. It's also a source of stress for many administrators due to a lack of direction and an overwhelming number of forms for compliance.

And each year, there are changes.

So it's critical for educators to understand some basics about Section 504, practical FAQs about Section 504, and dig into the differences between Section 504 Plans and Individualized Education Plans (IEPs).

This eBook can't ensure you comply with Section 504 and any form updates, but [we've got you covered](#) there, too. We're proud to partner with David Richards & Jose Martín on our Section 504 software.

"At this time, few schools have a firm grasp of the Section 504 process. By creating the guidelines and forms as a system, we sought to ensure consistency in language and action and, to the extent possible, have the forms guide Section 504 committees through their tasks to ensure that proper procedures were followed to satisfy the Office for Civil Rights (OCR)."

— **David Richards & Jose Martín**, Attorneys,
Nationally Recognized CESD Section 504 Experts



About Section 504

A Brief History of Section 504

Understanding how disability laws in the United States, like the Rehabilitation Act of 1973, evolved helps you understand what Section 504 is and, perhaps more importantly, what it's not.

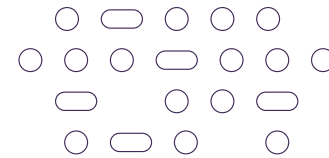
The story of Section 504 begins in 1954, in Topeka, Kansas, with the groundbreaking and pivotal lawsuit *Brown versus Board of Education*. Before 1954, discrimination based on a variety of distinguishing characteristics and demographic identifiers was legal and permissible.

In *Brown v. Board of Education*, the U.S. Supreme Court determined that it was unconstitutional for school districts to provide differing qualities of education based on race or skin color. So-called “separate but equal” classrooms and schools were determined to be not equal at all, and deemed unconstitutional.

But *Brown* didn't focus on disability.

Brown v. Board of Education addressed the issue of “separate but not equal,” and while it was pivotal, essential and a landmark decision, discrimination on many bases continued through the 1960s and 1970s. Statistics in the early 1970s indicated that over a million students with disabilities were not educated at all, and many were institutionalized, isolated, put in state homes and other government-funded facilities.





A Shift in the Tides for Disabled Persons in the U.S.

The tides did eventually begin to shift and there was an evolution in civil rights awareness through the 1960s, with the movement finally giving voice, acknowledgment and legal standing to disabled persons. However, it took time. Disabled individuals remained unprotected by law, despite efforts in the Civil Rights Actions of the 1960s.

In 1975, the first legislation to address disabled persons with regard to the provision of service or employment in public entities was finally enacted. The Rehabilitation Act of 1973 (it took two years to be fully enacted), requires affirmative action by the federal government and its contractors, and explicitly prohibits discrimination based on disability. “Public entities” include schools, as well as other agencies.

While the Rehabilitation Act of 1973 is an unfamiliar title to many people, it continues to serve as critical legislation in public schools as well as for hundreds of federal agencies and their contractors. The legislation is more commonly known as Section 504.

Since the great majority of states do not provide Section 504 regulations, and the federal law itself does not establish clear process rules, educators today are left grappling with the practical implementation of this near 50-year-old law without clarity.



What is Section 504's Goal?

A common misunderstanding of Section 504 is that the law intends to expand rights of public school students. That, in some way similar to the Individuals with Disabilities Education Improvement Act (IDEIA), Section 504 students receive additional process and instructional rights, which make their daily education something different or something “more” than general education students. Educators need to understand that Section 504 students are general education students, and that, differently than the IDEIA, which aims to create specific, individualized learning experiences for special education students, Section 504 simply aims to ensure access to the same general education for eligible students that all public-school students are entitled to receive.





What is the Section 504 eligibility criteria?

How should it be used?

The Section 504 eligibility criteria involves two questions:

1. Does a student present with a physical and/or mental impairment?
2. If so, does that physical and/or mental impairment substantially limit one or more major life activities?

Given the broad nature of these definitions and how many different diagnoses committees may face, the diagnosis itself typically isn't the tough issue in understanding eligibility. More importantly, committees need to identify data that shows student's need.

After establishing a diagnosis that affects a body system or the mind, Section 504 committees need to identify the impact of that difficulty on a major life activity. Major life activities are construed broadly also, involving everyday actions like walking, talking, seeing, breathing, hearing, caring for oneself, working, eating, processing, learning – any activity one engages in regularly.

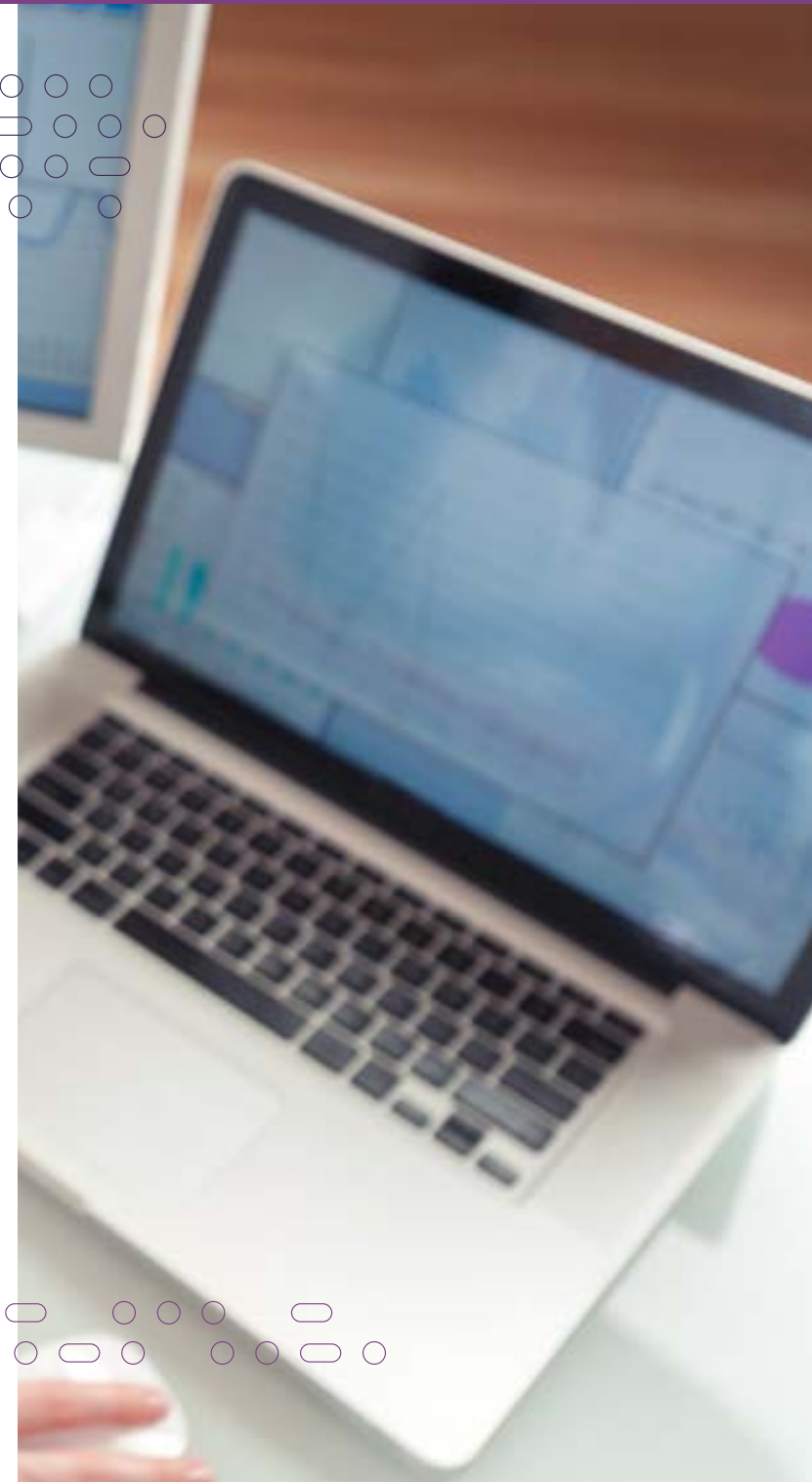


An Important Takeaway to Help You Manage Section 504 Requirements

Practical implementation for Section 504 responsibilities is difficult because the law does not provide process rules. Unlike the process established under the IDEIA, Section 504 prohibits discrimination, but does not explain how. The law provides no definition of the decision-making body or notice and consent rules; it doesn't identify who or how data should be collected, or set a review time period or process.

Perhaps most surprising, the law does not use the words "Section 504 Plan" even once. Because of this lack of specific guidelines, your school should rely heavily on strong internal procedures and understand and apply best practices.

That's why so many districts depend on software like Frontline Section 504 Management to help keep them in compliance. Frontline's exclusive partnership with David Richards & Jose Martín can help you stress less about the process and focus on more strategic initiatives.



FAQs about Section 504

Are parents entitled to bring an advocate to a 504 meeting?

Answer: No. Existing regulation prevents the parent from bringing someone to the meeting, including an advocate.

If a student's academics is not being impacted, they can still have a 504? For example, I have a student who has ADHD and it is not impacting their academics, but they can still have a 504?

Answer: Yes. For example, an ADHD student might be impacted in his concentration despite passing their classes, but they are expending inordinate effort in maintaining their grades. Look at the 2016 ADHD Resource Guide from OCR, as it makes this point and reiterates it. A student who is performing well academically may still have an impairment that qualifies them for assistance under 504.

If you do a MDR before recommending a student for expulsion, and the team decides it is a manifestation, can you still put them up for expulsion, or is it the same as IDEA?

Answer: Same as IDEA; the answer would be no.

How would you state ADHD in the plan if the school is identifying that as the impairment? The school can't "diagnose" ADHD - what working would you use?

Answer: There is no need for specialized or qualifying terms. The committee can indicate ADHD. The Frontline forms clarify that the statement of impairment is only an educational determination, not a diagnosis. But the terminology does not have to change.

So does that mean if a parent denies consent for initial services, the student would still be found eligible but have no plan?

Answer: When the parent refuses a 504 evaluation, there can be no finding on eligibility because there can be no evaluation. One aspect we also see is a parent that consents to 504 Eval, is identified as eligible, but declines the Service Plan. This student would be "Eligible + No Plan", since a parent cannot decline the eligibility finding.



FAQs about Section 504, cont.

I have a handful of students who are on a plan for Asthma. However, their Asthma is not “severe/life threatening” and does not affect them academically (not missing instruction, not absent for doctors’ appointments, no hospitalizations, etc.) Can the 504 Committee then have the discussion of dismissing the student from 504 eligibility and allowing the nurse to handle the Asthma Action Plans that are already sent to them for the school year? It just seems as if we are doubling our work and it’s one more thing for the teachers to have to keep up with. I understand they can be eligible with no plan, but at what point do you draw the line and decide there is no need for this?

Answer: OCR’s position, generally, is if the student has an impairment (asthma) that limits a major life activity (breathing), then the student is 504-eligible and deserves the legal protections of Section 504. Then, if they need accommodations or services from a health perspective, those should be in a 504 Plan developed by a 504 committee.

Do teachers have to log when a student uses accommodations? Or is it a choice?

Answer: Teachers have to implement 504 accommodations. Some schools, wisely, also want teachers to document, in some fashion, that the accommodations are indeed being implemented. This becomes crucial when or if the student starts to struggle.

If a student with Dyslexia does not need support in a Dyslexia program but only needs accommodations, they can remain in 504, correct?

Answer: Yes, if they have, for example, already completed their dyslexia program, but still need some accommodations in class and statewide assessment.

Would we then dismiss students who finish their dyslexia instruction in 504 or refer to Special Education if they still need specialized instruction?

Answer: If the student needs specially designed instruction, special education evaluation should be offered. If the student, once SPDI is completed, just needs accommodations, then no referral would be appropriate and 504 should provide those supports.

Alert! Texas-specific question here: Is there any movement for parents to push back on Dyslexia being a 504 option. The two areas are more blurred and will likely get more so.

Answer: Not at this point. It must be pointed out that in special education, parents will enjoy a much greater degree of procedural safeguards and rights.



Key Differences Between Section 504 Plans and IEPs:

Implication on Attendance, Discipline, and Policies

In their own ways, both Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA) are designed to make sure students with disabilities have equitable access to public education. Because of their similarities, it's important to examine these policies side-by-side.

While one is civil rights law, and the other is special education legislation, both have similar aims and important distinctions in areas like eligibility, attendance, discipline guidelines, and more. Keep reading to see a few of those differences outlined below!

Navigating Attendance Issues in Students with Disabilities

Attendance is one area where it's important administrators know the right procedures. You may be surprised (or not!) to find out that poor attendance can be rooted in a student's disability.

Yes, poor attendance in school can be associated with students' disabilities, including those outlined in a 504 or an Individualized Education Program (IEP). Disabilities can influence attendance in various ways:

- **Medical Issues:** Some students may have medical conditions or physical disabilities that require frequent hospitalizations, doctor's visits, or just days at home to rest and recover. This can contribute to a significant number of absences.
- **Emotional and Mental Health Issues:** Students with emotional or mental health disabilities, such as anxiety disorders or depression, might struggle with regular school attendance. Their conditions might make it difficult for them to cope with the social and academic pressures of school.
- **Learning Difficulties:** Students with specific learning disabilities might struggle academically, leading to frustration, low self-esteem, and a sense of failure, which may result in truancy or avoidance of school to escape the situations that make them uncomfortable.
- **Sensory Overload:** Some students, such as those with Autism Spectrum Disorders or Sensory Processing Disorder, may find the school environment overwhelming and stressful, which can lead to increased absences.
- **Executive Functioning Issues:** Students with disabilities that affect executive functioning, like ADHD, may struggle with organization and time management, resulting in tardiness or missing school.

For these students, having an IEP or 504 plan can be critical. These plans are designed to provide accommodations and supports that help address the student's specific needs and can include strategies to improve and manage school attendance.



The accommodations provided in Section 504 plans can also be designed to help students with their attendance, such as flexible scheduling, homebound instruction, inclusion of counseling, parental support, transportation support, or coordinating with medical professionals to ensure the student's health needs are met while maintaining educational progress. If these interventions do not work, this would be a good example of an instance where an IDEA referral may be needed to better support that student. This progression is common; students are moved from more generalized Section 504 support to a more specific IEP as their needs become clear.

Rules around attendance in your school or district may need to be modified for students that have Section 504 or IEP plans if their poor attendance is found to be rooted in their disability. Especially since it may be discriminatory to discipline the student according to general attendance policies, new solutions would be needed.

However, it's also important to remember that correlation does not always mean causation. Just because a student with a disability has poor attendance does not mean that the disability is the sole or even the primary cause of the attendance problem. Other factors like home environment, school climate, and individual personality traits can also play a significant role.



Discipline Under Section 504 and IDEA

Discipline and Special Education is another area where the right procedures are critical to student success and state and federal compliance. If you've spent time in K-12 schools, you likely already know there is often an intersection of Special Education and Discipline. Disabilities can definitely influence school discipline and behavior, although it's important to be careful not to automatically attribute all behavioral issues to a disability. Here are some ways student behavior may be impacted by a student's disability:

- **Emotional and Behavioral Disorders:** Some students have disabilities that specifically impact their behavior. For example, students with Oppositional Defiant Disorder (ODD) or Conduct Disorder (CD) may exhibit disruptive, defiant, or aggressive behaviors.
- **Impulsivity and Hyperactivity:** Students with Attention-Deficit/Hyperactivity Disorder (ADHD) might struggle with impulsivity, hyperactivity, or inattention, which can sometimes lead to disciplinary issues if not properly managed.
- **Communication Disorders:** Students with speech and language impairments might struggle to communicate effectively, which can lead to frustration and potentially challenging behavior.
- **Autism Spectrum Disorders (ASD):** Students with ASD might have difficulties with social interactions and communication, which could be interpreted as misbehavior. They may also have a hard time coping with changes in routine or sensory overload, leading to outbursts or other challenging behaviors.

- **Learning Disabilities:** Students with learning disabilities might exhibit behavior problems out of frustration or as a way to avoid tasks that are difficult for them.
- **Mental Health Issues:** Students with conditions like anxiety or depression might exhibit behaviors such as withdrawal, inattentiveness, or acting out, which could potentially lead to disciplinary issues.

In many cases, these behaviors are not intentional acts of defiance, but rather manifestations of the student's disability. This is why it's critical for educators to be aware of a student's disabilities and to have strategies in place to address behavioral issues appropriately.

One major goal of both Section 504 and IEP plans is to protect students against discrimination, and discipline is an area where the lines may seem blurry. Like with attendance, disciplinary policies must be modified and non-discriminatory when they are being applied to students with disabilities. The Individuals with Disabilities Education Act (IDEA) mandates that when a student's behavior impedes their learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Also, students with disabilities have specific protections when it comes to discipline. If a student's behavior is determined to be a manifestation of their disability, they cannot be removed from their current educational placement due to disciplinary infractions unless the infraction involves drugs, weapons, or serious bodily harm.



Despite this, it's also important to remember that not all misbehavior in children with disabilities is caused by their disability. Just like any other children, children with disabilities can also exhibit typical misbehaviors. It's important to discern the difference in order to implement the appropriate intervention.

Department of Education Policy Updates:

The US Department of Education is already concerned that students with disabilities, especially students of color, receive a disproportionate and inappropriate amount of discipline due to bias, when they should be directed towards services and support that will improve their educational experiences and behavior.

These are only a few of the important nuances that separate Section 504 plans and IEPs. Both provide tremendous support to students with disabilities in complex ways, and there is definitely more to uncover. If you want to dive deeper and learn how Frontline can help your district navigate Section 504, take a look at this resource.



Myths about Section 504, FERPA, and HIPAA

“HIPAA applies to schools.”

Educators worry about the confidentiality of all student information, particularly the data relied upon in developing and implementing IEPs and Section 504 plans, often on account of “HIPAA” protection concerning diagnostic and medical records. Such concern is helpful and motivating, because virtually all information regarding students – certainly doctor notes and evaluations – are protected from disclosure and review by anyone without “legitimate educational interests.”

But those protections are not because of HIPAA.

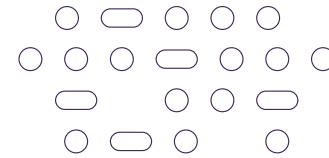
HIPAA, the “Health Insurance Portability and Accountability Act of 1996,” restricts the access, use and disclosure of “protected health information” maintained by “covered entities.” These entities are typically health plans, health-care clearinghouses, and health-care providers. That means that your school is not a covered entity, unless you’re providing “health care,” like through a free clinic or other service beyond a day-to-day school nurse.

So, stop worrying about HIPAA. But pay attention to FERPA and your state’s student record laws and regulations.

“We can’t call the doctor who wrote the student note without a signed release.”

That depends on who’s talking and what they’re sharing.





FERPA, the Family Educational Rights and Privacy Act of 1974 (also known as the “Buckley Amendment”), ensures access by parents and students and protects against the non-approved disclosure of “personally identifiable information” about students. That information includes virtually all information you collect and maintain on an enrolled student, certainly including the contents of the special education and Section 504 files.

But when you call a doctor to confirm that she authored a note that your Section 504 committee is considering, or to ask a question about a diagnosis for purposes of IEP drafting, or to confirm a medically excused absence, usually you’re not sharing information about the student. You are not disclosing “personally identifiable information” protected by FERPA. Rather, you’re asking for information from the doctor or the doctor’s office. A parent, guardian, or adult student need not permit you to call the doctor. You have that right.

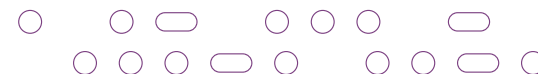
A release needed here, if any, is to be secured by the doctor from the parents/guardians, since any information shared is likely “health information” shared from the health provider to the school – the school isn’t sharing information about the student.

Any release needed is up to the doctor to determine. You can make your call, and ask relevant questions, so long as that conversation is a one-way street.

“Parents have access to all documents that mention their student.”

Well, most documents, but actually — not all.

Records that are kept in the “sole possession” of the maker, and not shared with any other person, are not considered “education records” under FERPA, regardless of the nature of the information they contain. This means that notes kept by a teacher, or a related service provider, regarding the implementation of modifications and/or accommodations, or notes kept by persons attending IEP team or Section 504 meetings, so long as not shared with or accessible by others, are not covered by FERPA.



Since this information is not considered to be FERPA-protected “education records,” it is not automatically accessible by parents.

Keep in mind though, those documents likely become education records if shared with colleagues or kept in a folder or file that is accessible by others. The information must be kept in the “sole possession” of the maker and maintained as confidential and not shared with others in order to remain outside of FERPA’s mandates.

“FERPA prohibits paraprofessionals/teacher aides from seeing IEPs and Section 504 plans.”

That’s probably not right.

FERPA prohibits the disclosure of personally identifiable information regarding students contained in education records by schools to third-parties without written consent (typically provided by parent or guardian).

But FERPA does not require written consent when “school officials” with “legitimate educational interest” review student records. Such access does not require prior notice to parents or guardians, other than the usual, annual FERPA notice provided by schools.

So, who are “school officials” with authority to review this information? And what is a “legitimate educational interest?” These terms are not defined by the law. Schools are required to define them in policy or regulation, and that information needs to be noted in the annual notice.

Typically, these terms may be defined by asking the question, “What’s the need to know?” or “What’s the job duty?” that requires access to the information?

If the answer involves the delivery of instruction, or the implementation of modifications or accommodations or related service provided in an IEP or Section 504 plan, then access to the record is likely permissible.

However, if the answer is curiosity, or some purpose unrelated to education, access is prohibited.

Which brings us to the paraprofessional or aide. Does that individual need to review an IEP or Section 504 plan to implement his or her responsibilities under that document? May the paraprofessional be trained in some other way? May you simply provide a list of responsibilities? What’s best practice? What’s the consistent practice of the school?

The point is — there is no blanket rule under FERPA (or otherwise) that “non-certified” personnel have less authority to access student records. And that’s a good thing, because paraprofessionals have similar ownership of IEP and Section 504 plans. They are valued members of our teams and should be treated as such.



Technology That Supports You and Your Section 504 Workflow

Remove the gray area from your Section 504 process.

With so much gray area in Section 504 regulations, **it's up to you** to follow a Section 504 process that has equity at its center.

Consistency is key to compliance, but with different buildings, classrooms, and grade levels, not to mention all of the staff involved in the Section 504 process, you face many challenges to achieving success.

So how can you address individual needs while enforcing a compliant district-wide process?

Frontline's software for 504 program management can help. Built in collaboration with nationally recognized Section 504 legal experts Dave Richards and Jose Martín, it's designed to support districts as they manage the complex and ever-evolving requirements of the Section 504 amendments to the Americans with Disabilities Act of 2008.



An Exclusive Partnership with Leaders in Education Law

With changing requirements, it's no easy task to stay compliant with Section 504. Frontline's exclusive partnership with Dave Richards and Jose Martín makes it easier to keep up so you never miss a beat. Behind the scenes, they annually update the software's forms to reflect and address changes in law, guidance from the Office for Civil Rights, and rulings from the courts.

