

Pelham School District SAU # 28

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Section 504 Resource Guide

Purpose

The Pelham School District is committed to the provision of a Free and Appropriate Public Education (FAPE) to any student with a disability and prohibit disability-based discrimination of any kind. According to 34 CFR§104.33(b)(1)(i), an appropriate education is a program designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of nondisabled students are met. This Section 504 Resource Guide is provided to assist in understanding and consistently implementing Section 504 procedures with the Pelham School District.

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 is Congress's directive to organizations receiving any federal funding that prohibits discrimination based on disability from all aspects of operation of the organizations.

According to the law (29 USC 794; 34 CFR 104.4), no qualified person with a disability shall, on the basis of that disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Discrimination is the exclusion from participation in, or the denial of benefits of, any program or activity receiving or benefiting from federal financial assistance. Students may not be denied participation in or be denied benefit from services that are afforded nondisabled students.

This important law applies to public school systems. The Pelham School District provides eligible disabled students who reside in the district with equal access (physical, academic, and extracurricular) to services, programs and activities offered by all schools within the jurisdiction of SAU #28.

Section 504 is a civil rights statute and it is the responsibility of schools' administration and staff to implement those practices and procedures necessary for a school to fulfill this law's requirements. At each school, the responsibility for ensuring Section 504 compliance rests with the building principal or her/his designee. Each school will have a designated 504 Coordinator. The District 504 Coordinator is the SAU Director of Student Services. The SAU Director of Student Services oversees the student-based implementation of Section 504 within the District. The SAU Human Resource Director oversees the implementation of the Section 504 for employees.

Identifying students for section 504 eligibility

In order to be eligible for Section 504 protection and a 504 Accommodation Plan, he or she must have 1) a mental or physical impairment, 2) which substantially limits, **3) one or more major life activities**. These three criteria are derived from 34 CFR §504.

A mental or physical impairment must be confirmed through a written diagnosis of such impairment by trained personnel. (104.35) The written diagnosis must indicate the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact or the expected long-term impact of the impairment. A variety of sources of information must be considered when eligibility is reviewed.

The School District will conduct any evaluations determined by the 504 review team to be necessary to establish or rule out eligibility under Section 504. Evaluations conducted outside of the District will be considered by the 504 Team. However, the District retains the right to conduct evaluations in order to determine whether or not a student is, or is not, eligible for a Section 504 Accommodation Plan.

The term “substantially limits” is not defined, but the term “substantially” suggests ‘considerable’ or ‘to a large degree’. In short, if one is unable to perform a major life activity or is significantly restricted in the manner, condition, or duration of performing one of the major life activities compared to the average person, he or she may meet criteria for a 504 plan. Simply having a condition or disability does not automatically qualify a student or employee for Section 504 protection and corresponding reasonable accommodations. The term “substantially limited” does not equate with performing at potential. The criterion is average performance in the general population.

Federal Law C.F.R.§104.3 (j) (2)(ii) defines major life activities as ‘caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working’. The Supreme Court has also emphasized that major life activities must indeed be important and refer to those activities that are of central importance to daily life, such as eating, standing, bending, communicating and others. (Toyota Motor Manufacturing, 122 s. Ct. at 691. The ADA Amendments Act Se. 2(b)(4) of 2008 has broadened the category to also included major bodily functions, such as, digestive, bowel, respiratory, neurological, and circulatory systems, etc.

It is important to note that all three criteria (physical or mental impairment, substantially limiting, a major life activity) must apply to a student before that student is eligible for Section 504 protection. In addition, the designated disability must constitute the reason why the student cannot equally access the school’s programs and services.

Because Section 504 does not provide any operational criteria of substantial limitation, the determination of whether or not a disability substantially limits a major life activity is subjective. Decisions regarding whether or not disabilities substantially limit major life activities are made on a case-by-case basis in the context of all available, relevant information.

In general, temporary, non-chronic impairments of short duration with little or no residual effects are not usually considered disabilities. Examples include the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely. In addition, appendicitis and seasonal allergies that do not substantially limit a person’s major life activities even when active are not disabilities

[29CFR§1630.2(j)]. However, an impairment that is episodic or in remission is considered a disability, if it would substantially limit a major life activity, when active.

Students who have a *record of a disability* or impairment are protected from discrimination based on that record. In general, they are not considered active Section 504 students and schools do not develop accommodation plans for them.

Students who are *regarded as having a disability* or impairment are protected from discrimination based on this presumption. However, they are not considered active Section 504 students and schools do not develop accommodation plans for them.

How is a Section 504 student review request made?

A parent, guardian, teacher, student study team, counselor, related service provider, other school staff and administration, and/or community agencies can initiate a Section 504 review request by contacting the 504 Coordinator for the school in writing. A Section 504 Student Referral form is available to facilitate the referral. Once a written request is received, a meeting will be convened to review available student records and determine the next appropriate course of action.

A properly convened team will include individuals knowledgeable about 1) the needs of the student, 2) the data being reviewed and 3) appropriate accommodation options. This team will consist of a minimum of three people. A 504 Coordinator and a classroom teacher should be in attendance. Parent participation is strongly encouraged. Others should be invited to participate as appropriate to the needs or challenges of the student. A few examples of other potential participants include school nurses, counselors, school administrators or related services providers, such as physical or occupational therapists.

If the properly convened team described above agrees that there is likelihood that the child could be eligible for Section 504 services, an evaluation should be conducted. It is important to note that a school must evaluate only if there is reason to believe that the child has a suspected disabling condition. Regardless of who referred the child, a referral does not mean that the school must, *in all cases*, conduct evaluations. However, if a parent has made a referral and the school determines that an evaluation is not needed because it does not believe the child has a disability covered under Section 504, the school must convey to the parents their rights to appeal the decision and have an impartial hearing.

What is the process for reviewing Section 504 eligibility?

If an evaluation has been determined necessary, the role of the team is to review available information and determine what additional information must be obtained in order to determine if the student has a disability and is in need of accommodations under Section 504. Section 504 requires only that evaluations be conducted in the suspected areas of need. Parental consent is required for initial evaluation for Section 504 eligibility; subsequent evaluations require only parental notice. A form entitled Section 504 Proposal for Evaluations is available to document this process.

Formal evaluations must have been validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer. They must be tailored to assess specific areas of need and administered in a manner

that is nondiscriminatory (tests what it seeks to measure rather than simply reflecting the barrier the suspected disability presents). Decisions regarding eligibility for Section 504 accommodations will not be based solely on one instrument. Information from a variety of sources will be considered, including, but not limited to: achievement test results, review of report cards and classroom progress reports, teacher input, parent input, health records, behavioral plans and observations. Relevant formalized checklists, aptitude/intellectual testing or other targeted evaluations will also be considered.

Once all necessary data or evidence is gathered, the role of the 504 Team is to review the nature of the student's impairment (if any) and determine how it affects educational access. The Section 504 Eligibility Review form is used to facilitate and document eligibility decisions. Whenever an evaluation is completed, a summary of the evaluation should document that the evaluation was completed and what assessments were considered. If, based on available documentation, the team determines that the student has a mental or physical impairment that **does** substantially limit a major life function or activity, then the team will proceed to construct a Section 504 Plan that outlines the necessary student accommodations.

Under the ADA amendment Act of 2008, Sec 4(a) amending 42 U.S.C. §12102(4)(E)(i), teams can not consider the ameliorating effects of mitigating measures when determining whether a person has a substantially limiting impairment. For example, a person must be viewed in terms of how the disability would impact him without any mitigating measures such as medications, inhalers, equipment, prosthetics, and aides. Eyeglasses and contact lenses are excluded from this.

If consensus is not reached by the team making the decision as to whether the student is eligible for Section 504, the 504 Coordinator will make the final decision of determination.

When would it be inappropriate to offer a Section 504 Accommodation Plan?

If evidence does not substantiate that the student meets **all three criteria** to be eligible for protection under Section 504, it would be inappropriate to offer a 504 Accommodation Plan. If any of the three criteria is missing (a mental or physical impairment, substantially limits, one or more major life activities), the school does not create a 504 Plan. It is important to note that other types of student plans might be appropriate and adequate to meet the needs of the student. For example, a Student Health Plan may be appropriate to meet the needs of a student with a simple food allergy.

Mitigating measures, such as medications, inhalers, equipment, prosthetics, and aides, can be considered when developing an accommodation plan.

Some 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 substantially limits 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.

A student fails to qualify for special education and 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.

A student is placed on a 504 Plan in order to receive special services that should be provided through the special education department, because the parent refuses to 'label' a student by including him or her in a special education program.

Design and implementation of a 504 Plan

Not all students who are eligible for section 504 need to have an accommodation plan. Students whose conditions are well controlled with medications or other measures may be eligible under Section 504; however, it may be that the student requires no accommodations at all and as such, not need a 504 Plan. If all that is needed is differentiated instruction from the regular education teacher that is routinely done, a 504 Plan may not be needed. These students are protected under the Section 504 nondiscrimination obligation of the school. Schools cannot deny eligible students, based solely on their condition, access to activities and/or services. The Section 504 Team will decide whether or not an accommodation plan is needed.

Although parent consent is not required to implement a 504 Plan, every effort will be made to secure consensus. If consensus is not reached by the team creating the accommodation plan, the Section 504 Coordinator will make the final decision regarding the accommodation plan.

Where will accommodations be provided for students and what are some examples of possible accommodations?

An accommodation is an adjustment that allows a student to complete the same activity, assignment or assessment as other students, but with a change in the timing, formatting, setting, scheduling, response or presentation. Implementation of most Section 504 accommodations occurs within the regular classroom or other general education settings. Accommodations generally are those minor adjustments to things like seating arrangements, lesson presentation, assignments, and other facets of the learning environment that provide the student with equal access to learning opportunities. An example could be moving the student to a position in the room that best supports his or her ability to attend to schoolwork. Accommodations might involve the use of special visual aids, large print, or using video recordings. Allowing a student additional time to complete a specific kind of task is also an accommodation. Countless accommodations exist that can support a student's equal access to educational opportunities. It is the job of the 504 Team to identify those accommodations that best support the access needs of a 504 eligible student.

Where must students be educated under Section 504?

Educating students with disabilities with their non-disabled peers to the greatest extent appropriate is a requirement under Section 504. The law requires that students with disabilities be educated with their non-disabled peers to the maximum extent possible, while meeting the needs of students with disabilities. Schools should always place students with disabilities with their non-disabled peers unless the district can demonstrate that the student's educational program cannot be achieved satisfactorily, with or without supplementary aids and services, in the general education setting. In making placement decisions, schools must always document reasons for placing students in more restrictive settings outside general education classrooms; parental consent is required for any placement other than the regular education setting.

Can a student receive related services (ex. physical therapy, transportation, mobility training, etc.) under Section 504?

A student may be eligible for related services under Section 504 only if those services are required in order for the student to access an appropriate educational program and for the student's needs to be met as adequately as the needs of nondisabled students are met. If a student can still access an appropriate educational program without the related service, then he or she may not be eligible for the related service.

Students on a Health Plan:

Students with health conditions usually can be found eligible under Section 504 when they meet the three criteria. If a student is being adequately served under a School Health Plan without a formal accommodation plan, it is not necessary to bring that Health Plan under 504, unless the parent requests it or need necessitates it. Each student on a health plan can be considered for Section 504 eligibility, and all are protected under the nondiscrimination obligation.

How are Section 504 Accommodations Plans documented and reviewed?

It is the responsibility of the Section 504 Team to identify student needs and the services and/or accommodations the student will receive. As stated previously in this document, a properly convened team will include individuals knowledgeable about 1) the needs of the student, 2) the data being reviewed and 3) appropriate accommodation options. The Section 504 Team will consist of a minimum of three people. A 504 Coordinator and a classroom teacher should be in attendance. Parent participation is strongly encouraged. Others should be invited to participate as appropriate to the needs or challenges of the student. Depending on the unique needs of the student, a few examples of other potential participants include school nurses, counselors, school administrators or related services providers such as physical or occupational therapists.

Documentation of the plan's details is in the Section 504 Accommodation Plan. This plan provides a summary of accommodations and, if applicable, services that a student needs in order to have equal access to the learning process or to other programs, activities, and services. The accommodation plan should be kept in the student's cumulative file and provided to appropriate teachers who will be responsible for implementing the accommodation plan.

The Section 504 Team must review active Section 504 Accommodation Plans at least annually with more frequent reviews occurring when necessary. The purpose of the 504 Accommodation

Plan Review is to modify or adjust student accommodations, services and/or program as needed to adequately meet the needs of the student.

If, at any time, a student eligible for accommodations under Section 504 is referred for special services, the 504 Coordinator for the school should be notified.

How is a 504 plan terminated and what is done with terminated 504 plans?

The Section 504 Team must meet to review current student needs and determine that the plan is no longer needed to provide the student equal access. In order to make this decision the school district must re-evaluate a student in accordance with Section 504 regulations and determine if the student's mental or physical impairment continues to exist. If the student continues to have a disability, the Section 504 team must determine that the impairment no longer substantially limits a major life activity. The Section 504 Eligibility Review form should be used to provide a framework for this decision. The completed form, indicating that a student is no longer eligible for accommodations under Section 504, should be attached to the front of the most current accommodation plan. Like active plans, a terminated plan should be kept in the student cumulative file to support the future efforts of staff that might need to consider some type of intervention for the student. As previously noted in this document, other types of student plans developed by school personnel may be appropriate to meet the needs of students who are not eligible for accommodations under Section 504.

Are schools required to provide parents with prior notice of a Section 504 eligibility meeting?

Yes! Current Office of Civil Rights (OCR) guidelines require that parents receive prior notice of a Section 504 eligibility meeting. Yearly or other plan reviews do not have these requirements. It is vital that the document providing prior notice explains the action the system proposes to take and the reasons why it has decided to proceed in that fashion.

Are schools required to provide parents with a list of parent/student rights under Section 504 before conducting an initial student review?

Yes! The following is a listing of student and parent rights granted by federal law. The intent of the law is to keep parents fully informed concerning decisions made about their child and to inform parents of their rights should they disagree with these decisions.

504 Procedural Safeguards and Parent/Student Rights

Parents have the right to:

1. Have their child take part in, and receive the benefits from public education programs without discrimination based on a disability.
2. Have the school system advise them as to their rights under federal law.
3. Receive notice with respect to proposed actions related to evaluation, identification, and placement/plan for services for their child.
4. Have their child be re-evaluated periodically including an evaluation before any significant change in program or services.

5. Have their child receive a free appropriate public education including the right to be educated with non-disabled children to the maximum extent possible.
6. Have their child educated in facilities and receive services comparable to those provided to students without disabilities.
7. Have their child receive special education and related services if he or she is found to be eligible under the Individuals with Disabilities Education Act (IDEA), or to receive accommodations under Section 504 of the Rehabilitation Act in order to receive a free and appropriate public education.
8. Have eligibility and educational placement decisions made based on an evaluation that draws from a variety of information sources, and by individuals who know the student, the evaluation data, and placement options.
9. Have transportation provided, to a school placement setting, at no greater parental cost than would be incurred if the student accessed typical school transportation to a program operated by the district.
10. Have their child afforded an equal opportunity to participate in non-academic and extracurricular activities offered by the school system through the provision of reasonable accommodations.
11. Examine all relevant records relating to decisions regarding their child's identification, evaluation, educational programs, and placement.
12. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny them access to the records.
13. Receive a response from the school system to reasonable requests for explanations and interpretations of their child's records.
14. Request amendment of their 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 their child. If the school system refuses this request, it shall notify the parents within a reasonable time and notify you of your right to a hearing.
15. Receive all information in their native language and primary mode of communication.
16. File a complaint/grievance with the school system when they believe their child's rights have been violated.
17. Request an impartial due process hearing related to decisions regarding their child's identification, evaluation, and educational placement. The parent and the child may take part in the hearing and be represented by counsel at their own cost.
18. Appeal the decision of an impartial hearing officer. Appeals should be filed with Office for Civil Rights: Boston Office
US Department of Education
33 Arch St. Suite 900,
Boston, MA 02110-1491 (617) 289-0111

What is the process within the school system for addressing Section 504 parent complaints?

The best solutions to parent concerns occur at the school level. Therefore, the first step in resolving a complaint involves the parent or guardian working with the building principal, building 504 coordinator and other appropriate staff members to reach a joint resolution of the issue. Should the issue not be resolved and the parents desire to file a 504 complaint, the parent should be advised to complete and submit a Section 504 Complaint Form to the school principal or principal's designee. The principal or designee reviews the complaint and attempts to facilitate resolution of the concern.

If the concern is not resolved at the school level then the parent can contact the Area Administrator assigned to that school and describe the concern. Area Administrators will follow the complaint procedures of the school system. Within the Pelham School District, the Director of Student Services for SAU #28 serves as the Area Administrator for 504 complaints. The Director of Student Services can be reached at the SAU #28 Administrative Offices, 59A Marsh Road, Pelham, New Hampshire 03076. Telephone: 603 635-1145, FAX 635-1283.

Should the parent not be satisfied with the decision made at the District level, then the Superintendent or other designee reviews the decision to determine if 504 guidelines and procedures were followed. Adjustments to the decision will be made if needed.

If the complaint or concern continues to be unresolved then parents have the option of filing a complaint with the Office of Civil Rights (OCR). The Office of Civil Rights is the federal agency responsible for enforcing Section 504 compliance. While it is highly recommended that all parties attempt resolution of issues as described above, parents and guardians always have the right to initiate a complaint with OCR or to involve OCR at any time during the complaint process. Contact information for OCR:

Office for Civil Rights: Boston Office
US Department of Education
33 Arch St. Suite 900,
Boston, MA 02110-1491
(617) 289-0111

Further information can be obtained at the following website:
<http://www.ed.gov/about/offices/list/ocr/complaints-how.html>