

Section 504

How does Section 504 differ from the ADA?

Section 504 protects students from discrimination on the basis of disability to the same extent as the Americans with Disabilities Act (ADA). This manual uses only the term "Section 504," but the district acknowledges that qualified students with disabilities have the same rights under the ADA as under Section 504.

What is the ADA Amendments ACT of 2008?

The ADA Amendments ACT of 2008, effective January 1, 2009 amended the Americans with Disability Act (ADA). The ADA Amendments ACT broadened who qualifies for protections under the ADA and Section 504.

a. Expanded definition of "major life activity"

The definition of "major life activity" was expanded by the 2008 ADA Amendments (the new language appears in bold): "major life activities" include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating, sleeping**, walking, **standing, lifting, bending**, speaking, breathing, learning, **reading, concentrating, thinking, communicating** and working.

A "major life activity" also includes the "operation of a major bodily function," including but not limited to functions of the immune system, normal cell growth, digestive bowel bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Common impairment that may entitle a student to a Section 504 plan include communicable diseases (e.g., HIV, hepatitis, tuberculosis), medical conditions (e.g., asthma, allergies, diabetes), and attention deficit disorder (ADD or ADHD).

b. "Substantially Limits"

The definition of "substantially limits" was relaxed with passage of the 2008 ADA Amendments in two significant ways:

- 1.** The amendments provide that "a(n) impairment that is episodic or in remission is a disability if it would substantially limit major life activity when active." For example, a student with Crohn's Disease who may have periodic flare-ups that require hospitalization must be evaluated based on how the disease affects him or her during those flare-ups, and not when the disease is inactive.

2. The 2008 ADA Amendments also clarified that a student may be eligible under Section 504 even if the student's disability or condition is controlled or mitigated, e.g. but medication, cochlear implants, hearing aids, etc.

Mitigating measures include, but not limited to:

Medication

Medical supplies, equipment, or appliances

Low-vision devices (excluding eyeglasses and contact lenses)

Prosthetics (including limbs and devices)

Hearing aides, cochlear implants or other implantable hearing devices

Mobility devices

Oxygen therapy equipment and supplies

Assistive technology devices

Reasonable accommodations or auxiliary aids or services

Learned behavioral or adaptive neurological modifications.

How does Section 504 differ from IDEA?

A student who qualifies for special education services under the Individuals with Disabilities Education Act (IDEA) is a qualified disabled student under Section 504. The converse, however, is not true: a qualified disabled student under Section 504 is not qualified to receive special education services and the protections of IDEA. In other words, some disabled students may qualify for accommodations under Section 504 who do not qualify for special education services under IDEA.

If a disabled student is receiving special education services in accordance with IDEA, then the student is adequately accommodated for the purposes of Section 504. For this reason, it is not necessary or appropriate to provide a disabled student with Section 504 protections (i.e., notice, evaluation and accommodation plan) if the student has already been determined eligible under IDEA. However, if a student is determined to be not eligible under IDEA, the evaluation team may want to consider whether the student would, nevertheless, qualify for accommodations under Section 504.

Any questions regarding IDEA should be directed to a school psychologist or the Special Education Department.

KEY DIFFERENCES BETWEEN IDEA and Section 504

IDEA	Section 504
The student must have a disability that falls within one or more specific categories of qualifying conditions (i.e., autism, specific learning disability, speech or language impairment, emotional disturbance, traumatic brain injury, visual impairment, hearing impairment, deafness, mental retardation, deaf blindness, multiple disabilities, orthopedic impairment, and other health impairments).	The Student must have a physical or mental impairment that substantially limits a major life activity (e.g., walking, seeing , hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks).
The student’s disability must adversely affect educational performance.	The student’s disability must prevent equal access to or benefit from the school’s programs or services.
Evaluation	
Full comprehensive evaluation, including psychological evaluation. Decision by multidisciplinary team, including parent.	Evaluation using relevant information from a variety of sources. Decision by a group of knowledgeable persons.
Parent consent required.	Parent notice required. Parent consent required only if student will undergo individualized standardized testing.
Annual review of student’s IEP. Mandatory reevaluation every three years.	"Periodic" reevaluation required; SUSD requires annual evaluation.
Independent evaluation at district expense if parents disagree with first evaluation.	No provision for independent evaluation at school’s expense.
Dispute Resolution	
District complaint	District complaint
State complaint	State complaint
Federal complaint	Federal complaint
Due process hearing by state-appointed hearing officer within 45 days.	Due process hearing by District-appointed hearing officer.