



Can't get special education?

A 504 Plan may help

Does your child have a disability? Has your child been tested for special education? If not, see our brochure "**Who can get special education?**"

Was your child tested for special education but didn't get it? Your child might get help from another program. It is called **Section 504**. Section 504 is part of another law called the Rehabilitation Act of 1973. It is a federal civil rights law protecting the rights of individuals with disabilities. Ask the school how Section 504 can help. All schools must have a person to answer questions about Section 504.

Who can get Section 504?

Section 504 covers **ALL** disabilities, not just the ones listed in the IDEA law. It includes health problems that keep a child from doing what other children can do. To get 504 help, a student must have one or more problems with:

- Taking care of his or her self **or**
- Doing things with his or her hands **or**
- Walking **or**
- Seeing **or**
- Hearing **or**
- Speaking **or**
- Breathing **or**
- Learning **or**
- Working

Section 504 can help with things like wheelchair ramps so your child can get into buildings. It can make changes



so your child can be in school programs and activities. It can also make changes in books or papers to help your child learn. It can make changes in how your child is taught. It can make changes in how your child shows what they learned.

Some of the disabilities that may let a student get 504 services are:

- Attention deficit disorders like ADD or ADHD
- Allergies
- Asthma
- Diabetes
- Emotional problems
- Problems walking or using hands
- Problems seeing or hearing
- Some diseases other people can catch like HIV / AIDS or tuberculosis
- Short-term medical problems because of illness or accident



IDEA is a special education program. Section 504 is considered a general education program. That means parents' rights are **different** from those in special education. To find out more about special education rights, see the back of this brochure.

Students who get 504 must have a **504 Accommodation Plan**. The Plan says what services and supports they will get.

Just as for IDEA students, Section 504 students must get a free, appropriate public education (FAPE). This means their education must be

provided at no cost to the parents. **AND** it must meet the student's needs.

Your child may be able to get Section 504 IF:

- Your child is coming back from a hospital, rehab or psychiatric facility (except for short-term medical problems)
- A doctor, psychologist, or licensed counselor says your child has a medical, emotional, behavior or physical problem
- Your child is on medication while at school
- Your child needs special medical help or equipment at school
- Your child is failing school
- Your child has a disability but is no longer in special education
- Your child has a disability, but does not meet the rules to get special education
- Your child is an addict but is not currently using drugs or alcohol. **Example:** Your child has been in a drug rehab program and is no longer using drugs. A person who is currently using illegal drugs or alcohol can't get Section 504 services.

Referral and Evaluation

If school personnel think a student has a disability, the student must be tested. The tests will show if there is a disability or not. The school or parent may ask for testing (evaluation). The school can't test your child for special education unless you give your OK.



A child must have a mental or physical disability to get Section 504. Proof must be in the student's medical records.

A team of at least 3 people decides if a student meets the rules to get Section 504 services. It should include people who:

- Know the student
- Understand what the evaluations mean and
- Know different ways to help kids learn

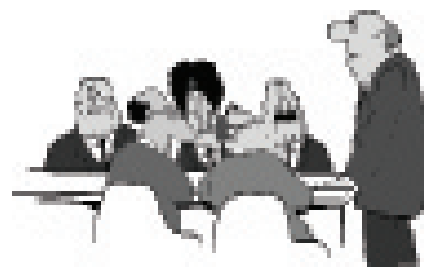
Who is on the Section 504

Committee? At

least the student's teacher, school psychologist, guidance

counselor, school

nurse and school administrator. Parents don't have to be on the Team. But you should be invited to all meetings about your child.



Section 504 testing can be anything that shows all facts about how your child learns, including behavior. Testing must be based on the type of disability and the kind of services needed. In some cases, the Section 504 Committee does the evaluation.

Having a disability is not enough

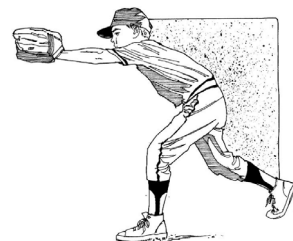
To get Section 504, your child must have a mental or physical disability. See page 2 for more information. Your child must **ALSO** have:

- Serious learning problems **OR**
- Serious behavior problems caused by the disability **OR**
- Any other physical or mental problem that keeps your child from learning at school

Accommodation Plan

The Section 504 Committee decides what services your child will get. The Committee will look at what help your child needs in class. But the Committee also decides what help your child gets to take part in other school activities. This includes:

- Recreational activities
- Sports
- School-sponsored clubs



The Committee decides what kind of help your child needs for these activities.

You should get a report on how the 504 Accommodation Plan is working. This should be done at least as often as you get report cards.

Re-Evaluation Review

At least once a year, your child's Section 504 Accommodation Plan should be checked to see if changes are needed. The school must do a re-evaluation of your child's disability at least every 3 years. They can do it more often if needed.

Does the school want to change where your child learns (placement)? Or is your child being suspended or expelled for a long time? Then the school must **first** do a re-evaluation and send you a notice.

Procedural Safeguards/Due Process

Notice

The Section 504 Committee must send you a written notice about anything they do about:

- Identifying your child's disability
- Testing your child for disability
- Changing where your child learns (placement)



Testing (Evaluation)

Your child must be tested before:

- Getting Section 504 services for the first time
- Getting related services like speech therapy (help talking) or physical therapy (help walking)
- Any big change in placement, including removing your child because of behaviors

The Section 504 Committee and/or the persons doing the testing decide what kind of tests to do.

The tests must:

- Be able to show what your child's learning problems are, not just get a single score
- Show what your child can do
- Not show the problems caused by your child's disability unless that is what the test is trying to find out
(**Example:** Your son can't hold a pencil. He should not have to write out the tests. **UNLESS** it is a test to see what problems he has writing.)
- Have proof they will work for what they are testing
- Be given by people with the kind of training listed in the test rules
- Also come from other places than formal tests
- Not discriminate



If you disagree

What if you disagree with what the Committee says about your child's disability? Or what if you disagree with the testing? Or what if you disagree with where they want your child to learn? You have a right to have a hearing. A hearing lets both sides talk and then a hearing officer decides who is right. You can have a lawyer for the hearing if you want.



If your child breaks school rules

Students on a 504 Plan get treated the same way as students in special education. See our brochure "Does your child get in trouble at school?" to find out about the rules. **BUT there are 2 things that are different for students on a 504 Plan.**

1. Students on a 504 Plan who are expelled don't get services while they are out.
2. Sometimes the school and parents disagree about where a child should learn. In special education, the student stays where they are until the disagreement is over. But the school can go ahead and move a student on a 504 Plan. They don't have to wait until the disagreement is over.

Is your child being **suspended** for more than 10 days in a school year? Or is your child being **expelled**? Then the Section 504 Committee must decide if the behavior is caused by the disability.

What if the Committee decides the disability caused the behavior? Then the Committee should look at the 504 Plan and Behavior Plan to see if they were being followed. If not, this must be corrected right away. They must also look at services and placement. The Committee decides if any changes are needed. What if your child doesn't have a Behavior Plan? Then the Committee decides if one is needed.

Is your child using illegal drugs or alcohol now? Or did your child take a gun to school or school activities or on school



grounds? Then the school can do the same thing it does for students without disabilities. They don't have to do an evaluation or decide if the disability caused the behavior.

Due Process Hearing

What if you and the school disagree and can't settle it? You or the school can ask for a due process hearing. Both sides can have a lawyer if they want. A Hearing Officer is in charge of the hearing and decides who wins.

Do you want a hearing? Send a written letter to the Director of Special Education. The letter should say:

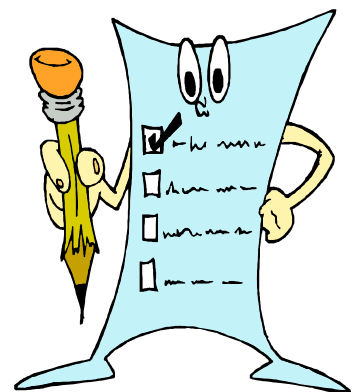
- Why you want the hearing
- What time of day you would like the hearing
- Two possible dates for the hearing
- If you want the hearing open to the public or closed



The earliest the hearing can be held is 15 days from when you ask. The longest it can be is 30 days from when you ask. Can it take longer? Yes, if you or the school asks **AND** the other side and the Hearing Officer agrees.

Reasons to Ask For a Hearing

- You and the school disagree about your child's disability **OR**
- You and the school disagree about testing your child for Section 504 **OR**
- You and the school disagree about where your child will learn (placement) **OR**
- Your child was placed in a setting that is not the least restrictive environment. This means your child is kept away from students without disabilities. **OR**
- Your child was refused some services because the program wasn't easy to use, understand or get into **OR**
- Because of your child's disability the school wouldn't make accommodations or modifications to the general education



program. This means the school wouldn't change how your child was taught, tested or did homework or class work. **OR**

- Your child was not allowed to do after school clubs, sports or activities because of a disability

The Hearing

Have records or other proof you will use at the hearing? You must give the school a copy at least 5 days before the hearing. They must also give you copies of their records or proof.

The school must let you look at your child's records and make copies.

You can have a lawyer or advocate at the hearing. **OR** you can bring someone else who knows your child.



The school will have a lawyer. You decide if you want your child there.

You and the school can bring witnesses. You can question each other's witnesses.

You will get a written record of everything said at the hearing. **OR** you can get a tape recording.

The Hearing Officer will send his written decision to you and the school. The Hearing Officer must do this **within 45 days**. The 45 days started when the school got the paper saying you wanted a hearing. **Can it ever take longer?** Yes, if you agree to wait longer. **OR** if you or the school ask for longer and the Hearing Officer agrees.

What the Hearing Officer decides is final. **BUT** you or the school can take the case to state or federal court.

What if the school won't help your child?

One of the places below may help you. Or connect you with someone who can help you.

- In Metro Nashville Public Schools? Call **The Arc of Davidson County - 615-321-5699, ext. 35**. They may be able to help in other counties.
- **Legal Aid Society - 1-800-238-1443**. They help in some counties.
- **Nashville Prevention Partnership - 615-297-7635**
- Metropolitan Nashville Public Defender's Office, Juvenile Division, **The Kids' Rights Program - 615-880-3710**

Ask for our other brochures:

- Is your child having trouble in school?
- Who can get special education?
- What is an IEP?
- Writing an IEP
- If you and the school disagree
- Does your child get in trouble at school?
- Your rights as the parent of a child in special education

NOTE: This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice.

This project is funded under an agreement with the State of Tennessee, Department of Finance and Administration, Office of Criminal Justice Programs and is supported by Award #2099-SU-B9-0002 awarded by the Bureau of Justice Assistance, Office of Justice Programs, USDOJ. This brochure was a joint project of The Arc of Davidson County, The Kids' Rights Program, Legal Aid Society of Middle Tennessee and the Cumberland and the Nashville Prevention Partnership. The Cal Turner Family Foundation has provided the Legal Aid Society with support to increase parent understanding of special education.

© 1998 - 2011 Possibilities, Inc. All rights reserved. Used with permission.