

## Section 504 – FAQs

### What is “discrimination” under Section 504?

Discrimination occurs when a district, **based on disability**:

- denies a disabled student the opportunity to participate in or benefit from an aid, benefit, or service which is afforded to non-disabled students (e.g., denies credit to a student whose absenteeism is related to his disability, expels a student for behavior related to his disability, fails to dispense medication, or provide an individual health plan or nursing care plan to a disabled student who cannot attend school without such services);
- fails to afford a disabled student an opportunity to participate in or benefit from an aid, benefit, or service that is equal to that afforded to non-disabled students (e.g., conditions a disabled student’s participation in a field trip on the student’s parent or guardian attending the trip, refuses to allow an otherwise qualified disabled student to try out for an interscholastic athletic team);
- fails to provide aids, benefits, or services to a disabled student that are as effective as those provided to non-disabled students (e.g., fails to provide a disabled student necessary environmental, instructional or behavioral accommodations or another related aid or service, fails to provide a disabled student necessary study skills instruction or another special education service);
- provides different or separate aids, benefits or services than are provided to non-disabled students unless there is a legitimate, nondiscriminatory reason for doing so (e.g. requires all disabled students to use special education transportation, segregates all disabled students in portable classrooms, requires all disabled students to use a different recess period);
- denies a disabled student the opportunity to participate in programs or activities that are not separate or different unless there is a legitimate and nondiscriminatory reason for doing so (e.g., denies all disabled students the opportunity to eat meals in the school cafeteria, prohibits all disabled students from participating in full day kindergarten, refuses to allow any disabled students to enroll in regular physical education classes);
- denies a disabled student the opportunity to participate as a member of a planning or advisory board (e.g., denies disabled students the opportunity to participate in student government);
- otherwise limits a disabled student in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., denies all disabled students admission under school choice);
- aids or perpetuates discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability (e.g., sponsors a non-district organization that excludes disabled students); and
- selects the site or location of a facility that has the effect of excluding disabled students from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity (e.g., selects an inaccessible facility in which to hold school plays, concerts, or athletic competitions).

### **When does an impairment “substantially limit” a student’s major life activity?**

There is no single formula or scale that measures substantial limitation. A physical or mental impairment substantially limits a major life activity for a student if the impairment substantially limits the student’s ability to perform a major life activity as compared to the student’s non-disabled age/grade peers. An impairment need not prevent, or significantly or severely restrict, a student in performing a major life activity to be considered substantially limiting.

As a general rule, a student with a physical or mental impairment who is able to participate in or benefit from a district’s education program (e.g. attend school, advance from grade to grade, and meet the standards of personal independence and social responsibility expected of his or her age and cultural group), without the provision of special education or related aids or services, is not a disabled student under Section 504 for purposes of FAPE.

### **Can a district consider “mitigating measures” used by a student when determining whether an impairment constitutes a disability for a student?**

*No.* When determining whether an impairment constitutes a disability for a student, districts should disregard the ameliorating effects of any mitigating measures that the student uses. Mitigating measures include: medication; medical supplies; equipment or appliances; low-vision devices (other than ordinary eyeglasses or contact lenses); prosthetics; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; environmental or instructional accommodations; other related aids or services; learned behavior or adaptive neurological modifications, etc.

### **Does a district need to develop a Section 504 plan for every student who has a disability?**

*No.* A district does not need to develop a Section 504 plan for every student who has a disability. A district needs to develop a Section 504 plan for those students who, because of disability, need accommodations or some other type of related aids or services, to participate in or benefit from the district’s education program.

### **Is a district required to develop a Section 504 plan for a student who “has a record of disability” or is “regarded as disabled?”**

*No.* A district is required to develop a Section 504 plan for those students who have a physical or mental impairment that currently substantially limits a major life activity. The fact that a student “has a record of disability” or is “regarded as disabled” does not trigger a district’s duty to provide FAPE. A district’s duty to a student who “has a record of a disability” or is “regarded as disabled” is to protect the student from discrimination (e.g., it would be discriminatory for a district to prohibit a student who has a record of

drug addiction, but is not currently engaging in the illegal use of drugs, from participating in an interscholastic athletic team, based on the student's "record of disability").

**Does the language of the law still include "reasonable" accommodations for K-12 education? If so, please define "reasonable."**

Reasonable accommodation is a Section 504 term related to employment not K-12 education. A district is required to provide whatever services it determines a disabled student needs to participate in and benefit from its education program, regardless of the cost of such services.

**Is a district that operates a public general education preschool program required to provide FAPE to disabled preschool students participating in the program?**

*No.* A district that operates a public general education preschool program may not, on the basis of disability, exclude qualified students with disabilities from participating in the program, and must take into account the needs of disabled students in determining the aids, benefits or services to be provided under the program. The district is not, however, required to provide such students a FAPE.

**Is a district required to provide FAPE to a student who has a disability but does not need special education or related aids or services to participate in or benefit from the district's education program?**

*No.* A district is required to provide a FAPE to only those students who have a physical or mental impairment that currently substantially limits a major life activity. A district is not required to provide a FAPE to a student who has a disability but does not have a current need for special education or related aids or services. A district's duty to such a student is to protect the student from discrimination (e.g. disability harassment).

**What are "related aids and services" under Section 504?**

"Related aids and services" means any service that a disabled student needs to participate in or benefit from a district's education program (e.g., if, without a specific related aid or service, a disabled student is unable to participate in or benefit from a district's education program, the aid or service in question is a necessary related aid or service for the student). In contrast to IDEA, under which students are eligible to receive related services if and only if they need related services to benefit from special education, students are eligible to receive related aids or services under Section 504 even if they are not provided any special education. Related aids and services include but are not limited to:

- school health services
- counseling services
- environmental, instructional, and behavioral accommodations
- transportation services
- speech-language services
- audiology services
- physical and occupational therapy services

- orientation and mobility services
- provision of a modified schedule, grading system, or curriculum

### **What is a “significant change in placement” under Section 504?**

A “significant change in placement” means a significant change in the type or amount of educational or related aids or services that a district provides to a disabled student. A “significant change in placement” may include but is not limited to:

- initiating or terminating a service
- significantly increasing or decreasing the amount of a service
- disciplinary actions that exclude a student from school for more than 10 consecutive school days in a school year
- disciplinary actions that create a pattern of exclusion from school (e.g., cumulative short-term suspensions that are each 10 school days or fewer in duration that create a pattern of exclusion due to the length of each suspension, the proximity in time of the suspensions, the total amount of time the student was excluded from school, and the similarities of the behaviors that led to the suspensions)

### **Can a temporary health condition be a disability under Section 504 for purposes of FAPE?**

*Yes, under certain circumstances.* A temporary impairment constitutes a disability under Section 504 if its severity is such that it substantially limits one or more major life activities for a student for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity for a student.

For example, though pregnancy is not considered a disability under Section 504, a district may determine that a pregnant student, who cannot attend school for several months due to pregnancy-related complications, is disabled under Section 504 for purposes of FAPE.

### **Can an impairment that is episodic or in remission be a disability under Section 504 for purposes of FAPE?**

*Yes, under certain circumstances.* An impairment that is episodic or in remission constitutes a disability under Section 504 for purposes of FAPE if it would substantially limit a major life activity when active. For example, a district may determine that a student with epilepsy, major depression, post traumatic stress disorder, cancer, or students that have other impairments that are episodic or in remission, is disabled under Section 504 for purposes of FAPE.

### **Can drug addiction be a disability under Section 504 for purposes of FAPE?**

*Maybe.* A student who is drug addicted but is in recovery and is not currently engaging in the illegal use of drugs, may qualify as a disabled student under Section 504 for purposes of FAPE if the student’s drug addiction substantially limits the student’s ability

to perform a major life activity. Such a student may need a modified schedule, school counseling, or another type of special education or related aid or service to participate in or benefit from the district's education program. A student who is drug addicted and is currently engaging in the illegal use of drugs, however, is excluded from the definition of a disabled student under Section 504. A district is under no obligation to evaluate such a student under Section 504 regardless of the educational impact the drug addiction is having on the student. A district may treat such a student in the same manner as it treats non-disabled students.

### **Can alcoholism be a disability under Section 504 for purposes of FAPE?**

*Yes.* A student who is addicted to alcohol, regardless of whether the student is currently using alcohol or is in recovery, may qualify as a disabled student under Section 504 for purposes of FAPE if the student's alcoholism substantially limits the student's ability to perform a major life activity. Such a student may need a modified schedule, school counseling, or another type of special education or related aid or service to participate in or benefit from the district's education program.

### **Does Section 504 protect a disabled student who engages in drug or alcohol related misconduct at school?**

*No.* A district may discipline a disabled student for the illegal use or possession of drugs or alcohol at school or at a school-sponsored function in the same manner and to the same extent as it disciplines non-disabled students. The procedures at 34 CFR 104.35 (regarding manifestation determinations) and 104.36 (regarding procedural safeguards) are not required for such disciplinary actions. The parent or guardian of the disabled student may challenge the regular education issues raised by the disciplinary action (e.g., whether the student did what he was charged with doing) at a regular education discipline hearing, but does not have a right to challenge the disciplinary action under Section 504. For example, the parent has no right to challenge the disciplinary action by asserting that the student's drug or alcohol-related misconduct was disability-related.

### **Can "social maladjustment" be a disability under Section 504 for purposes of FAPE?**

*Maybe.* A student with a "social maladjustment" (e.g., conduct disorder or oppositional defiance disorder) may qualify as a disabled student under Section 504 for purposes of FAPE if the student's condition substantially limits the student's ability to perform a major life activity. Such a student may need medication administration, school counseling, a behavioral intervention plan, or another type of special education or related aid or service to participate in or benefit from the district's education program.

### **Is "specific learning disability" defined the same under Section 504 as it is under IDEA?**

The term "specific learning disability" is a special education funding category under IDEA. The term "specific learning disability" is defined the same under Section 504 as it is under IDEA; however, a student who is not diagnosed as having a "specific learning

disability” as that term is defined, but is diagnosed as having dyslexia, dysgraphia, dyscalcula, or another type of processing disorder, may qualify as a disabled student under Section 504 for purposes of FAPE if their condition substantially limits their ability to participate in or benefit from school.

**Can a district require a parent to provide a medical diagnosis before it will initiate an evaluation of a student under Section 504?**

*No.* Under Section 504, a district must evaluate a student if the district knows or suspects that the student, because of a disability, needs special education or related aids or services to participate in or benefit from its education program, regardless of whether the student has a medical diagnosis. A district may provide a student medical diagnostic services, as a related service, if the district believes that it needs a medical diagnosis to determine whether a student has a medical condition.

**Does a student with a medical diagnosis automatically qualify as a disabled student under Section 504 for purposes of FAPE?**

*No.* Not every medical diagnosis will substantially limit a student’s ability to perform a major life activity. However, if a medical diagnosis does substantially limit a student’s ability to perform a major life activity, the student may qualify as a disabled student under Section 504 for purposes of FAPE. Such a student may need an individual health plan, an emergency or nursing care plan, or another type of special education or related aid or service to participate in or benefit from the district’s education program.

**Does a student with a “life threatening health condition,” as defined by state law, automatically qualify as a disabled student under Section 504 for purposes of FAPE?**

*Yes.* Because state law, SHB 2834, defines “life threatening health condition” as a health condition that puts a student in danger of death during the school day if a medication or treatment order and a nursing care plan are not in place, by definition, a student with a “life threatening health condition” has a physical or mental impairment that substantially limits a major life activity, and qualifies as a disabled student under Section 504 for purposes of FAPE.

**Would a high school student with a serious illness who qualifies for Home/Hospital Instruction on an intermittent basis throughout the school year require a Section 504 plan?**

*Yes.* An impairment that is episodic or in remission constitutes a disability under Section 504 for purposes of FAPE if it substantially limits a major life activity for the student when active. If it is foreseeable that a student’s illness would require home/hospital instruction throughout a school year on an intermittent basis, the district should develop a Section 504 plan for the student that includes home/hospital instruction.

## **What should trigger an initial evaluation under Section 504?**

A district should evaluate a student if the district knows or suspects that, **due to a disability**, the student needs special education or related aids or services to participate in or benefit from the district's education program.

For example, the following situations **may** trigger an initial evaluation under Section 504:

- a student is failing to achieve passing grades
- a student is failing to advance from grade to grade
- a student is chronically absent from school
- a student is returning to school after a serious illness or injury
- a student is returning to school after alcohol or drug treatment
- a student has a "life threatening health condition"
- a student has a temporary impairment that will be substantially limiting for an extended period of time
- a student has an impairment that is episodic or in remission that is substantially limiting when active
- a student is failing to meet the standards of personal independence or social responsibility expected of his or her age or cultural group
- a student is expelled from school

## **Must a school district obtain parental consent prior to conducting an initial evaluation?**

Yes. Section 504 requires districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, Section 504 provides that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

## **What can a school district do if a parent withholds consent for initial placement under Section 504 after a student is determined eligible for services?**

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

## **How much is enough information to document that a student has a disability under Section 504 for purposes of FAPE?**

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. Section 504 requires that school districts draw from a

variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

### **Is educational testing required as a part of a Section 504 evaluation?**

*Maybe.* Evaluations under Section 504 are individually designed. A Section 504 evaluation may be broad (including educational testing) or narrow (limited to medical data). It is the responsibility of the district to determine the scope of each student's Section 504 evaluation.

### **What is the difference between a regular education intervention plan and a Section 504 plan?**

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

### **Can an IHP/emergency care plan serve as a Section 504 plan?**

*Yes.* If an IHP/ emergency care plan is serving as a Section 504 plan for a student, the district needs to remember to use its Section 504 process to develop and implement the IHP/emergency care plan (for example, the district needs to base the student's IHP/emergency care plan on evaluation data and provide the student's parent/guardian notice of their procedural safeguards).

**If a student is on an IEP and has a tube feeding procedure, should he or she also be on a Section 504 plan?**

*No.* If a student is eligible under IDEA a student must have an IEP. Any related aid or services related to a tube feeding procedure should be included on the student's IEP.

**If a student has a peanut allergy, would the district be required to provide a peanut free diet to the student?**

*Maybe.* If a school provides food services (e.g. breakfast and lunch) to its general student population, it needs to provide food services to disabled students that are designed to meet their disability-related needs. Therefore, if a student with a severe food allergy has a disability-related need for allergen-free food during the school day, a district may need to provide such food to meet the student's disability-related needs at no greater cost than non-disabled students pay for comparable food. A case-by-case determination will need to be made.

**Regarding a young diabetic student whose parent does not show up to provide care - no RN full time in school, no PDA, can the parent demand a full time nurse in the school?**

*No.* A school district has a duty to provide a diabetic student the school health services that the district has decided the student needs to participate in and benefit from its education program. If a student needs a full time nurse in their school and their school does not have a full time nurse and the parent has not located a PDA, the district has a duty under Section 504 to place the student in a school with a full time nurse. It is acceptable under Section 504 for a district to centralize school health services in certain schools and to place students who need those services in those schools.

**Given the new law regarding re-entry to school after concussion, should those students have Section 504 plans?**

*Maybe.* A student with a concussion should have a Section 504 plan if the district has determined that the student's concussion is a disability and that the student needs special education or related aids or services during the school day to participate in or benefit from the district's education program.

**Can a district limit its duty to provide FAPE to a disabled student based on cost?**

*No.* As a general rule, a district's FAPE obligation under Section 504 is not subject to cost considerations. For example, a district generally may not refuse to provide necessary special education or related aids or services to a disabled student because doing so would cause the district a financial hardship.

**Can a district refuse to provide special education services to a disabled student because the student doesn't meet the eligibility criteria under IDEA?**

*No.* A district cannot refuse to provide special education services to a disabled student who needs special education services simply because the student doesn't meet the eligibility criteria under the IDEA. However, as a practical matter, the only disabled students who are likely to need special education services are students who are eligible for special education under IDEA.

**Can a district refuse to allow disabled students to participate in advanced placement or International Baccalaureate classes or programs (accelerated classes and programs) solely because the student has a disability or needs special education or related aids or services?**

*No.* A district that provides advanced placement or International Baccalaureate classes or programs (accelerated classes and programs) must not discriminate against a student based on disability in admission to such classes and programs. The district cannot categorically deny admission to a student based on disability, or deny admission to a disabled student solely because the student needs special education or related aids or services. The district must provide disabled students an equal opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the purpose of its accelerated classes and programs and Section 504.

In addition, once a district admits a disabled student to its accelerated classes or programs, it must provide the student with the related aids or services that the student needs to participate in and benefit from the classes or programs. For example, if a student's IEP or Section 504 Plan provides for Braille materials in order to participate in general education classes and he or she enrolls in an accelerated or advanced history class, then he or she must be provided Braille materials for that class. The same would be true for other needed related aids and services such as extended time on tests or the use of a computer to take notes.

**Can a district deny a disabled student admission under school choice solely because the student has a disability or needs special education or related aids or services?**

*No.* A district that chooses to participate in school choice must not discriminate against a student based on disability in admission. The district cannot categorically deny admission to a student under school choice based on disability, or deny admission to a disabled student solely because the student needs special education or related aids or services. The district must consider and act upon applications for admission under school choice in a manner that affords disabled students an equal opportunity to be admitted as compared to non-disabled students.

A district that chooses to participate in school choice may develop criteria for admission by nonresident students as long as the criteria are: (1) neutral on their face with respect to disability; (2) educationally justified; (3) applied equally to both disabled and nondisabled students alike; and (4) subject to modification when necessary to avoid discriminating against a student on the basis of disability, unless the district can

demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity in question.

For example, it is permissible under Section 504 for a district to deny admission to a disabled student under school choice if the grade level or school that the student needs is at capacity, as long as it applies that reason equally to deny admission to both disabled and nondisabled students alike, and the district can demonstrate that admitting the student would fundamentally alter the nature of the education program in the grade level or school in question. A resident district's refusal to release special education funds for a student is not a legitimate reason to reject a disabled student under school choice.

**Can a district that operates a multi-district online school program under school choice deny a disabled student admission solely because the student has a disability or needs special education or related services?**

*No.* A district that operates a multi-district online school program under school choice must not discriminate against a student based on disability in admission. The district cannot categorically deny admission to a student based on disability, or deny admission to a disabled student solely because the student needs special education or related aids or services. The district must provide disabled students an equal opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the mission of the online school program and Section 504.

A district that operates a multi-district online school program under school choice may develop eligibility criteria for admission as long as the criteria are: (1) neutral on their face with respect to disability; (2) educationally justified; (3) applied equally to both disabled and nondisabled students alike; and (4) subject to modification when necessary to avoid discriminating against a student on the basis of disability, unless the district can demonstrate that making the modification would fundamentally alter the nature of its online school program.

For example, a district can establish specific reading, writing and math achievement criteria for admission to its online school program, as long as the criteria are justified by the nature of its online school program, applied equally to all applicants, and subject to modification when necessary to avoid discriminating against a student on the basis of disability, unless the district can demonstrate that making the modification would fundamentally alter the nature of its online school program.

**Can a district place a disabled student on a shortened school day?**

*Maybe.* As a general rule, a disabled student has the right to the same length school day that a district provides to the student's nondisabled age/grade peers. Before shortening the length of a disabled student's school day as compared with the student's nondisabled peers, a district must determine, through evaluation and placement procedures that satisfy the evaluation and placement requirements of Section 504, that the student needs a shortened school day to meet his or her individual educational needs.

Any determination to provide a disabled student a shortened school day must be based on current evaluation data documenting that shortening the student's school day is necessary to provide the student a FAPE. It would violate Section 504 for a district to base a determination to provide a disabled student a shortened school day on factors such as the category of the student's disability, severity of disability, availability of special education or related services, configuration of the district's service delivery system, availability of space, administrative convenience, or any factor unrelated to the student's individual educational needs.

### **Can a district exclude a disabled student from a field trip?**

*Maybe.* As a general rule, a district cannot exclude a disabled student from participating in a field trip for which the student is otherwise eligible to attend unless the district has a legitimate, nondiscriminatory justification for excluding the student. Any decision to exclude a disabled student from participating in such a field trip is a placement decision, and must be based upon procedures that satisfy the evaluation, placement, and due process requirements of Section 504. It is not permissible under Section 504 to exclude a disabled student from a field trip because:

- the student needs related aids or services (e.g. the administration of medication or the assistance of a school nurse) to participate in the field trip; or
- the student's parent or guardian is unable to attend the field trip, unless the participation of the parents or guardians of non-disabled students is required.

### **Is a disabled student entitled to extended school year (ESY) services under Section 504?**

*Maybe.* A district must provide ESY services to a disabled student under Section 504 if the district determines that the student needs ESY services to receive a FAPE.

### **Is a disabled student entitled to transition services under Section 504?**

*Maybe.* A district must provide transition services to a disabled student under Section 504 if the district determines that the student needs transition services to receive a FAPE.

### **How does Section 504 apply to the disciplinary removal of a disabled student from school?**

Section 504 protects disabled students from being improperly removed from school for misconduct that is related to their disability. As a general rule, Section 504 and IDEA apply to the disciplinary removal of disabled students in a similar manner. Before a district can implement a disciplinary action that constitutes a "significant change in placement" (**Refer to "What is a 'significant change in placement' under Section 504?"**), it must evaluate the student to determine whether the student's misconduct was caused by, or had a direct and substantial relationship to the students' disability or was the direct result of the district's failure to implement the student's Section 504 plan. This type of evaluation is commonly called a "manifestation determination" (**Refer to "What**

is a ‘manifestation determination’ under Section 504?”). If a disabled student’s misconduct is a manifestation of his or her disability, a district cannot implement a disciplinary action that constitutes a significant change in the student’s placement. If a disabled student’s misconduct is not a manifestation of his or her disability, a district can discipline the student in the same manner that it disciplines non-disabled students for the same misconduct. Under Section 504, unlike IDEA, a district does not have to provide a disabled student educational services during the period of time the student is properly removed from school for disciplinary reasons.

### **What is a “manifestation determination” under Section 504?**

A “manifestation determination” is an evaluation that answers two questions:

- *Is the misconduct in question related to the student’s disability?*  
This determination must be based upon evaluation data related to behavior, and must be recent enough to afford an understanding of the student’s current behavior. Misconduct is a manifestation of a disability if it “is caused by the disability,” or “has a direct and substantial relationship to the disability”. Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student’s disability. A determination that a student knows the difference between right and wrong does not constitute a determination that the student’s misconduct was or was not a manifestation of the disability. In addition, a district cannot make a categorical determination that misconduct is or is not a manifestation of a disability based on a student’s IDEA eligibility label.
- *Is the misconduct in question the direct result of the district’s failure to implement the Section 504 plan?*  
This determination must be based upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. District staff does not need to use all of the sources of information listed above in every instance. The point of the requirement is to ensure that more than one source of information is used in making such a placement decision. In addition, the district should examine the kinds of educational placements that previously have been tried with the student and determine whether a placement more restrictive than the current placement would manage the student’s behavior. As a general rule, a district should not long-term suspend or expel a student without first attempting to manage the student’s behavior by placing the student in a more restrictive educational placement unless it has a legitimate reason for rejecting a more restrictive placement as a viable placement option.

### **Is a district required to modify an eligibility requirement to enable a disabled student to participate in an extracurricular activity?**

*Maybe.* A district must provide disabled students an equal opportunity to participate in extracurricular activities. This issue arises when a disabled student is denied participation in extracurricular activities because he or she hasn’t met the requirements for participation. As a general rule, a district can impose eligibility requirements to participate in extracurricular activities as long as they are neutral on their face with respect to disability,

essential to the activity in question, and applied equally to both disabled and nondisabled students alike. A district may be required to modify an eligibility requirement if the requirement discriminates against the student in question based on disability and modification of the requirement would not fundamentally alter the nature of the activity in question.

For example, a district may establish a grade/credit eligibility requirement for participation in an extracurricular activity. If a disabled student wants to participate in the activity and the district determines that the student is unable to satisfy the eligibility requirement because of his or her disability, the district must modify the requirement to enable the student to participate unless doing so would fundamentally alter the nature of the activity. If the district refuses to allow the student to participate in the activity because making the modification would fundamentally alter the nature of the activity, the district must make a Section 504 grievance procedure available to the student to challenge his or her exclusion from the activity on the basis of disability.

A district may also choose to modify an eligibility requirement to enable a disabled student to participate in an extracurricular activity if a district determines that a disabled student needs to participate in the activity to receive a FAPE.

**If a district has reasonable cause to believe that a disabled student is ineligible to participate in or continue in an interscholastic athletic activity under the rules and regulations of the Washington Interscholastic Athletic Association (WIAA), does the district have an independent responsibility under Section 504 to ensure that applying the WIAA rule or regulation in question to the student does not subject the student to discrimination on the basis of disability?**

*Yes, under certain circumstances.* If a district has information that a WIAA rule or regulation as applied to a specific student may subject the student to discrimination on the basis of disability, it must take reasonable steps to ensure that application of the rule or regulation does not discriminate against the student on the basis of disability. For example:

1. Make an initial determination about whether application of the rule or regulation to the student subjects the student to discrimination on the basis of disability;
2. If the district's initial determination is YES, the district must assist the student to appeal the ineligibility through WIAA's several levels of appeal, unless the district becomes persuaded during an appeal that applying the rule to the student does not discriminate against the student on the basis of disability;
3. If the district's initial determination is NO, the district must provide the student and his or her parent or guardian an internal Section 504 grievance procedure to promptly and equitably resolve the matter.

**Is a district required to modify the curriculum in a general education class to accommodate a disabled student?**

*Maybe.* A district must modify the curriculum in a general education class if a disabled student needs a modified curriculum to participate in or benefit from the class and the necessary modification does not fundamentally alter the nature of the class. A district is under no obligation to provide a curriculum modification that would result in a class that is fundamentally different in nature. For example, if a student is enrolled in a lab science class and the student cannot complete the lab requirement due to disability-related absences, the district is under no obligation to modify the class by waiving the lab requirement if doing so would fundamentally alter the nature of the class. The decision of whether a disabled student needs a modified curriculum is a placement decision under Section 504.

**Is a district required to modify the grading system in a general education class to accommodate a disabled student?**

*Maybe.* A district must modify the grading system in a general education class if doing so is necessary to provide a disabled student an equally effective system to assess the student's performance in the class. The decision of whether a disabled student needs a modified grading system is a placement decision under Section 504.

**Can a report card for a student with a disability identify special education or related aids or services being provided to the student or otherwise indicate that the student has a disability?**

Yes. Report cards are provided to parents to indicate their child's progress or level of achievement in specific classes, course content, or curriculum. Consistent with this purpose, it is permissible under Section 504 for a report card to indicate that a student is receiving special education or related services, as long as the report card informs parents about their child's progress or level of achievement in specific classes, course content, or curriculum. For instance, a report card for a student with a disability may refer to an IEP or a Section 504 Plan in order to report on the student's progress on the specific goals in the IEP or Section 504 plan.

**Can special notations, including asterisks or other symbols, appear on a report card for student with a disability who received accommodation in general education classes?**

Yes. Accommodations are generally understood to include aids or adjustments that are part of an IEP or Section 504 Plan that enable the student with a disability to learn and demonstrate what the student knows. In general, accommodations do not affect course content or curriculum. Examples may include sign language interpreters in the classroom, the provision of materials in alternate formats, or extra time on tests. Accordingly, to the extent that the use of notations, asterisks, symbols, or other coding on a report card to indicate that a student with a disability received accommodations is part of the information given to parents about their child's progress or level of achievement in specific classes, course content, curriculum, the IEP or Section 504 Plan, it is permissible under Section 504.

**Can a transcript for a student with a disability indicate that the student has a disability, has been enrolled in a special education program, or has received special education services?**

*No.* Section 504 prohibits unnecessary disclosure of disability status to third parties. A student's transcript generally is intended to inform postsecondary institutions or prospective employers of a student's academic credentials and achievements. Information that a student has a disability, or has received special education or related services due to having a disability, does not constitute information about the student's academic credentials and achievements. Notations that are used exclusively to identify a student as having a disability or identify education programs for students with disabilities unnecessarily discloses the student's disability status to a third party. Identifying programs as being only for students with disabilities also would be viewed as unnecessary disclosure of disability status. Therefore, it would be a violation of Section 504 for a student's transcript to indicate that a student has received special education or a related service or that the student has a disability.

**Can special notations, including asterisks or other symbols, appear on a transcript for a student with a disability who received accommodations in general education classes?**

*In general, no.* Because the use of accommodations generally does not reflect a student's academic credentials and achievement, but does identify the student as having a disability, it would be a violation of Section 504 for a student's transcript to indicate that the student received accommodations in any classes. For example, a notation indicating the use of Braille materials is not related to whether that student mastered all the tenth grade objectives for her literature class. The only purpose of such a notation is to identify that student as having a visual impairment. Because accommodations are generally understood to include aids and adjustments to enable a student with a disability to learn and demonstrate knowledge, this notation would identify the student as having a disability and therefore would unnecessarily disclose the student's disability status to third parties.

**Can a transcript for a student with a disability indicate that a student received a certificate of attendance or similar document rather than a regular diploma?**

*Maybe.* A transcript for a student with a disability may indicate receipt of a certificate of attendance or a similar document, rather than a regular diploma, under certain circumstances. These circumstances are where this does not disclose that a student has received special education or related services, does not otherwise specifically disclose that a student has a disability (for example, because certificates of attendance are available to both students with disabilities and students without disabilities), is not used for the purpose of identifying programs for students with disabilities, and is consistent with the purpose of a student transcript -- to inform postsecondary institutions and prospective employers of a student's academic credentials and achievements.