



**SECTION 504
GUIDELINES**

PERKINS LOCAL SCHOOL DISTRICT

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Perkins Local School District

DIRECTORY

Ms. Jodie Hausmann.....	Superintendent.....	419-625-0484
Ms. Betty Schweifert	Treasurer	419-625-0484
Ms. Tricia Samuel	Director of Student Services	419-625-0484
Ms. Jennifer Long.....	Principal, Furry Elementary School	419-625-4352
Ms. Cristin Cicco.....	Principal, Meadowlawn Intermediate School	419-625-0214
Mr. Matt Cox	Principal, Briar Middle School	419-625-0132
Mr. Dean Stanfield	Principal, Perkins High School.....	419-625-1252
Ms. Brittany Remaklus.....	School Psychologist (PK-5)	419-625-4352
Ms. Shari Meyers	School Psychologist (6-12).....	419-625-1252

Perkins Local School District, Board of Education Members

President.....	Mr. Matt Kosior
Vice President.....	Mr. Terry Chapman
Members	Dr. Brad Mitchel
	Mr. Andy Carroll
	Mr. Michael Ahner

Perkins Local School District
 Student Services Department
 3714 Campbell Street, Suite B
 Sandusky, OH 44870
 419-625-0484

Section 504 of the Rehabilitation Act of 1973, with its subsequent amendments, is a federal civil rights law that prohibits discrimination against students with disabilities. Section 504 regulations require school districts to provide appropriate education to students with disabilities. This manual provides guidance on the implementation of Section 504 by Perkins Local School District.

Please contact the Perkins Local School District, Department of Student Services at 419-625-0484 if language translations are needed.

The information in this handbook includes the changes resulting from the Americans with Disabilities Act Amendments Act of 2008, and reflects the Perkins Local School District’s ongoing commitment to educating ALL children in accordance with the PLSD Board of Education's vision and mission.

General Information about Section 504

Section 504 of the Rehabilitation Act of 1973 with its amendments is a civil rights statute that prohibits discrimination against individuals with disabilities. This law is enforced by the Office for Civil Rights (OCR) and the EEOC (Equal Employment Opportunities Commission). Both agencies enforce Title II of the Americans with Disabilities Act of 1990 (ADA) reauthorized as the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. The reauthorization extends the prohibition against discrimination to the full range of state or local government services (including public schools), programs, or activities regardless of whether they receive federal funding or not. Under Section 504, denying a disabled student a Free Appropriate Public Education (FAPE) constitutes disability discrimination.

Section 504 covers students with diagnosed, certified, or classified disabilities who attend public and private schools. A student is "disabled" under the Section 504 regulations if the student meets anyone of the three prongs of eligibility listed in 34 CFR 104.3(j)(1). To be protected under Section 504, a student must be determined to:

1. Have a physical or mental impairment that substantially limits a major life activity/body function or
2. Have a record of such impairment, or
3. Be regarded as having such impairment

The ADAAA (2008) did not change the actual language of the three prongs, but it did change how the various phrases used in the three prongs are understood. Congress provided, as part of its rules of construction in the ADAAA, that "The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." This statement should guide the school's Section 504 team's evaluation of the potentially eligible student. The school's Section 504 team is defined as a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options (34 CFR §104.35(c)).

Relationship between Section 504 and the ADAAA

The Americans with Disabilities Act (ADA), enacted in 1990 and amended in 2008 as the ADAAA, and the Rehabilitation Act of 1973 (Section 504) are civil rights laws that protect individuals with disabilities from discrimination. As of January 1, 2009, these laws have become interchangeable; whatever applies to Section 504 also applies to ADAAA.

Virtually every violation of Section 504 is also a violation of the ADAAA in the educational arena. In the event that a complainant alleges that the District has violated one statute, OCR and the EEOC will likely investigate for violations of the other statute.

Section 504/ADAAA compared to the Individual with Disabilities Education Act (IDEA)

Eligibility for protections and services under Section 504 is not the same as eligibility for Individuals with Disabilities Education Act (IDEA). Section 504 has a much broader definition of what constitutes a disability. Under IDEA, students must need specialized instruction and meet various criteria for the program of suspected disability. Specialized instruction is provided to the student via an Individualized Education Plan (IEP). Section 504, however, is the provision that protects the civil rights for a student and is created to "level the playing field" for students with mild to moderate disabilities. These student are in a general education setting and do not need

specialized instruction to meet their needs. However, they may need limited support with medication, accommodations for testing and/or class work, or for behavior support. Some individuals may be eligible for protections under Section 504, yet may not require specific accommodations or supports due to mitigating measures such as medication or therapy.

Section 504 does apply to all students with disabilities, including those students eligible for services under the IDEA. With respect to IDEA-eligible students, however, districts fulfill the requirements of Section 504 by complying with the more stringent procedural and substantive provisions of the IDEA. This handbook does not address the process associated with identifying, evaluating, and serving the “IDEA-eligible student.” Rather, it focuses on the process associated with identifying, evaluating and serving the “Section 504-only student”.

Eligibility

To consider for eligibility for a student under Section 504 the following question must be answered:

"Does a student have a have a physical or mental impairment that substantially limits a major life activity or major bodily function?"

Physical or Mental Impairments

Section 504 defines physical or mental impairment as:

- a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;
or
- b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

The regulation does not set forth an exhaustive list of specific diseases or categories that may constitute physical or mental impairments. The definition of physical or mental impairment under Section 504 is broad, including students with life-threatening health conditions that will put a student in danger of death during the school day, if medication or treatments are not in place.

If a student does not have a physical or mental impairment the student does not meet the definition as being disabled under Section 504.

Substantial Limitation

A physical or mental impairment substantially limits a major life activity if the student's ability to perform a major life activity or major body function is decreased as compared to the student's non-disabled age/grade peers.

There is no single formula or scale that measures substantial limitation. Impairment need not prevent, or significantly or severely restrict a student in performing a major life activity to be considered substantially limiting. Title II provides three (3) factors to consider when

determining whether or not the disability substantially limits a major life activity or major bodily function:

1. Nature and severity of the impairment;
2. Duration or expected duration of the impairment; **AND**
3. Permanent, long-term impact or expected impact of the impairment.

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity or major body function must be made by the Section 504 team. Section 504 regulations do not define the term "substantial" and therefore have left this interpretation to school districts. For the most part, "substantial" means a student is limited in the performance of a major life activity when compared to how students in the general population perform the same activity. School Section 504 teams, therefore, use data from a variety of sources to make decisions regarding a student's substantial limitation as it relates to eligibility under Section 504.

Section 504 teams must be sure that a student's disability is based on a mental or physical impairment and not a condition such as environmental, cultural, or economic disadvantage. Conditions such as homelessness, limited English ability, attendance, lack of motivation, transiency, or lack of educational opportunity, are not conditions that have as a basis a mental or physical impairment. A condition may trigger an impairment, but the impairment is the basis for the disability and is documented through a medical diagnosis.

Major Life Activity

This list is not all inclusive. An activity or function not found on the list may be determined to be a major life activity.

<u>Functions of the Immune System</u>	<u>Basic Life Functions</u>
<ul style="list-style-type: none"> ➤ Bladder ➤ Neurological ➤ Reproductive ➤ Circulatory ➤ Digestive ➤ Brain ➤ Bowel ➤ Respiratory ➤ Endocrine ➤ Normal Cell Growth 	<ul style="list-style-type: none"> ➤ Performing Manual Task ➤ Communicating ➤ Caring for One's Self ➤ Working ➤ Walking ➤ Thinking ➤ Reading ➤ Speaking ➤ Learning ➤ Lifting ➤ Standing ➤ Breathing ➤ Sleeping ➤ Eating ➤ Seeing ➤ Bending ➤ Hearing

Mitigating Measures

Mitigating measures are defined as actions or procedures that may be used by a disabled student to manage the impairment or lessen the impact of the impairment. Mitigating measures include medication, medical devices, related aids, and/or services. Mitigating measures must be disregarded when determining a student's eligibility under Section 504. However, the mitigating measures or supports may be considered when writing a student's accommodation/support plan as this information is useful to know what accommodations work and may be helpful for this student.

Impairments that are Episodic or in Remission

The ADAAA declares "An impairment that is episodic or in remission is a disability only if it would substantially limit a major life activity when active." Students who have impairment that may be considered episodic or in remission may be determined eligible under Section 504 as a student with a disability, but may not need an active Section 504 plan at this time. School teams should monitor these students to activate a plan if the student's condition becomes active and substantially limits the student's functioning.

Episodic Impairments

Some students have physical or mental impairments that vary in severity. Conditions such as seasonal allergies or asthma, migraines, rheumatoid arthritis, and cystic fibrosis are good examples of impairments that may be substantially limiting at times (in hot weather, when the student is stressed, when irritants or trigger factors are present) and have little impact at other times. Schools commonly qualify students under Section 504 if their condition, though not constant, episodically rises to the level of substantial limitation of a major life activity. Students should not be denied eligibility simply because the disability, at the moment of evaluation, is not substantially limiting, especially when the school knows from past experience that substantial limitation will likely occur. School Section 504 teams should look carefully at the range of data over a period of time and not just the student's current level of performance. The timing of the evaluation should not function to preclude eligibility for students whose impairments are episodic and who are not substantially limited at the time of evaluation.

Impairments in Remission

The ADAAA language on impairments in remission is the same as episodic impairments: "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." An example is a student who had cancer that is now in remission. The student would be eligible if the cancer substantially limited the student when it was active in the past. However, this student may not need an accommodation plan, but may need to be monitored for a period of time. If the cancer returns, a plan must be developed immediately.

Temporary Impairments

A temporary impairment is an impairment of a short duration (usually 6 months or less) or there is no residual effect to major bodily functions or life activities. 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 expected duration of the impairment and the extent to which the impairment limits a major life activity or bodily function. Section 504 eligibility determination meetings must occur and the team makes the determination if the impairment is temporary or not. Contact the District Section 504 office for further information.

The 504 Process

Referral

Referrals may be made by anyone (e.g., parents, teachers, or other knowledgeable professionals) at any time during the school year. Referrals shall be made on the *Suspected Disability Referral Form* and submitted to the Building Principal.

Generally, a staff member should refer a student for an evaluation under Section 504 if she/he suspects that the student has a mental or physical impairment but also suspects an impairment substantially limits one or more major life activities.

Notice and Consent

Upon receipt of a *Suspected Disability Referral Form*, the Building Principal will make a **reasonable attempt** to:

- Notify the parent/guardian that their child has been referred for a Section 504
- Ask them to provide written consent to a Section 504 evaluation, and
- Provide the parent(s) with a copy of the *Section 504: Notice of Parent and Student Rights*

Consent must be obtained prior to beginning the evaluation process.

Procedural Safeguards

Procedural safeguards for parents and the students are contained in the *Section 504: Notice of Parent and Student Rights*. The notice is to be provided to the parent(s) with respect to actions regarding the identification, evaluation, or educational placement (including the creation of a 504 Plan) of students who, because of their disability receive services under Section 504.

The procedural safeguards include notice, an opportunity for the parent(s) or guardian(s) of the student to examine relevant records, an impartial hearing with the opportunity for participation by the student's parent(s) or guardian(s) and representation by counsel, and a review procedure. A copy of the procedural safeguards may be provided at any team meeting or when written results of a meeting are being provided to the student's parent(s).

Evaluation

The evaluation is the starting point for determining whether a student is eligible for services under Section 504. The District is required to conduct an evaluation before providing Section 504 services. The nature and extent of the information needed to make a Section 504 eligibility decision is determined on a case-by-case basis by a group of persons knowledgeable about the student, the meaning of evaluation data, and the placement options (i.e., the Section 504 team). Information obtained through the evaluation process must be documented and all significant factors must be considered. The evaluation must draw upon information from a variety of sources and may include:

- School records review
- Observations of the student
- Building or classroom assessments
- Parent/Student/Teacher interviews
- Behavior rating scales or other checklists
- Pertinent medical information
- Information provided by the parent
- Other relevant information

Where formal testing is determined to be necessary, consult with your building school psychologist.

A medical diagnosis of a physical or mental impairment does not, in and of itself, determine Section 504 eligibility. Additionally, the District may request, but cannot require, a parent to provide a medical statement or authorize the release of the student’s medical information as part of the evaluation process. If a parent refuses to consent to a medical assessment and alternative assessment methods are not available, the 504 Team should proceed to make an eligibility determination based on the information at hand.

Eligibility Determination

The purpose of the eligibility meeting is to discuss the information gathered and to determine whether the student has a disability that makes him/her eligible under Section 504 (i.e. review the impairment and determine whether it substantially limits one or more major life activities). The eligibility determination should be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. The parent will be invited to the meeting as a member of the team. As an option to attendance at the meeting, the parent(s) can participate in a meeting by telephone conference. If the parent(s) are not able to participate in the meeting, the District will employ other means of communication to obtain parental input before finalizing a placement decision.

Possible Outcomes from a 504 Eligibility Determination Meeting

Option 1	Option 2	Option 3
<p>The student does not qualify under Section 504.</p> <p>Parent/Guardian will be provided with written notification of the determination and their right to appeal. Consider utilizing the building’s Problem Solving Team (RTI) process.</p>	<p>The student does qualify under Section 504 but does not need a plan.</p> <p>Parent/Guardian will be provided with written notification of the determination and their right to appeal.</p>	<p>The student does qualify under Section 504 and does need a plan.</p> <p>Team will proceed to the creation of a 504 plan.</p>

Section 504 Plan

In addition to the description of the student’s disability or related services needed, the Section 504 Plan should also specify:

1. Reasonable accommodations, except those that would fundamentally alter the nature of the program.
2. How the general education and related aids and services will be provided and by whom. The Section 504 Plan, when applicable, will specify the amount of services to be provided to the student.

The Section 504 Plan should be signed by the members of the team. After parents' consent to the initial Section 504 Plan, the District may implement subsequent plans without written parental consent, but the parents must be provided with a copy of the Notice of Section 504/ADA Procedural Information and Rights (Form 2260.01A F3) that explains their right to challenge the District's actions.

Once a plan is signed by the parent, the Building Principal is responsible for distributing the Section 504 plan to staff working with this student; this includes coaches or advisors of non-academic and extracurricular activities and services. Plans should be reviewed by the Building Principal and re-distributed at the onset of each new school year.

Re-Evaluations

Re-evaluations are not required at specific intervals; however, assessments will be updated so that eligibility and accommodation planning is based on information that accurately defines the student's disability and reflects the student's current strengths and needs. At least every three (3) years, appropriate school staff should determine whether updated evaluations are needed. A re-evaluation will be completed prior to a significant change in placement. When a re-evaluation is needed, parents will receive a copy of the *Section 504: Notice of Parent and Student Rights*. Consistent with initial evaluations, parents will be afforded the opportunity to meaningfully participate and provide input into the re-evaluation process.

Transfer Students

A student with an active Section 504 plan who enrolls in PLSD from outside the district must be reevaluated within a reasonable time, but no later than 45 school days. PLSD accepts the student's current plan on a temporary basis. At the evaluation meeting, scheduled within 45 school days, the Section 504 team determines if the student continues to meet eligibility under Section 504. If the student is determined to be eligible, a new accommodation plan, if needed, is written for use at the PLSD school. If the student is determined to no longer be eligible for services under Section 504, the team monitors the student for any further needs.

A student who reenrolls in PLSD must also be reevaluated to determine if the student continues to meet eligibility requirements. Once again, the Section 504 team may accept the student's former plan on a temporary basis while waiting to reevaluate the student. If the student was exited from a Section 504 plan prior to withdrawal from PLSD the Section 504 team would begin the process for eligibility determination only if a new referral is initiated.

Otherwise Qualified

If a person with a disability wants to participate in an activity in which the individual is not otherwise qualified to participate, disallowing participation does not constitute discrimination.

Example: A 16-year-old student with attention deficit hyperactivity disorder (ADHD) tries out for the basketball team but cannot dribble, shoot, or pass; therefore, does not have the basic skills to play basketball. As a result, the coach does not select the student to play on the team. This is not discrimination under Section 504, because the student is not otherwise qualified to be on the team.

If this student were not allowed to tryout for the team based solely on their disability of ADHD, that is discrimination and is a violation of the law under Section 504.

Example: A 16-year-old student with attention deficit hyperactivity disorder (ADHD) tries out for the basketball team and demonstrates the required skills to play basketball. After reviewing the student's file, the coach does not select the student to play on the team because he has ADHD. This is discrimination under Section 504, because the student is otherwise qualified to be on the team. The student met all requirements to be on the team, but was denied access only because of their ADHD diagnosis.

Non-academic Services

The District shall provide non-academic and extracurricular services and activities, in such a manner as is necessary, to afford qualified disabled students an equal opportunity for participation in such services and activities. Non-academic and extracurricular services and activities may include, but are not limited to: counseling services, physical recreational athletics, transportation, health services, recreational activities, and special interest groups or clubs sponsored by the recipients. Participation in school trips is often considered an extension of the academic curriculum for regular education students.

For example, qualified disabled students shall:

- not automatically be counseled towards certain career objectives more than non-disabled students with similar abilities.
- have an equal opportunity to participate in physical education courses and athletics. Although qualified disabled students may participate in separate activities for the disabled, no qualified disabled student shall be denied the opportunity to compete (i.e. tryout) for membership on a team or to participate in courses that are not separate or different.

Discipline

Students who are eligible under Section 504 have certain additional protections when charged with a violation of the Student Code of Conduct, which may result in a suspension or expulsion that constitutes a significant change in placement.

Similar to suspension or expulsion of a student with a disability under the IDEA, it is necessary to conduct a manifestation determination for a Section 504 student when:

- The expulsion will be for more than 10 consecutive school days; or
- The number of cumulative suspension days for the school year will exceed ten (10) school days.

If either situation above applies, the District is required to conduct a manifestation determination before any significant change in student's placement may occur. The parent must be invited to participate in the meeting and be provided with a copy of the *Section 504: Notice of Parent and Student Rights*. The purpose of the manifestation determination is to review whether the student's misconduct was caused by the student's disability or whether the conduct was a direct result of the District's failure to implement the student's Section 504 plan.

The determination should be made by a group of persons knowledgeable about the student, the meaning of the evaluation data, placement options, the student's Section 504 Plan, and the disciplinary incident.

If the Section 504 Team concludes that the student's conduct is a manifestation of the student's disability, the student must remain in, or be returned to, his/her current educational placement, unless the parent and the District agree to change the student's placement. If the Section 504 Team concludes that the student's conduct is not a manifestation of the student's disability, the District may determine the relevant disciplinary actions applicable to all students.

Child-Find Activities

The Perkins Local School District shall endeavor to locate and identify every qualified disabled person within the district who is not receiving a public education. The Section 504 staff will collaborate with the PLSD, Federal and State Compliance Department to engage in child-find activities and communication annually. Activities may include but not limited to presenting information at parent meetings at school sites and within the community, school staff meetings, posting information in the school office, and reviewing student information upon registration.

Notice of Non-discrimination

The Perkins Local School District shall take steps to notify participants, employees, and applicants of district responsibilities under Section 504. The following notice shall appear in student/parent handbooks, teacher's handbooks, non-certified personnel handbooks and published personnel recruiting materials: "In compliance with Federal Law, Perkins Local School District administers all education programs, employment activities and admissions without discrimination against any person on the basis of gender, race, color, religion, national origin, age or disability."

Impartial Due Process Hearing

A parent who disagrees with identification, evaluation or placement of a student with a disability, under Section 504, has the right to request an impartial due process hearing. Request for a Section 504 due process hearing must be made in writing to the District's Compliance Officer, Superintendent Jodie Hausmann. A hearing will be scheduled not more than thirty days (30) after the written request is received. The parent or guardian will receive notice of the hearing, have the opportunity to examine relevant records, and have an opportunity to participate in the hearing. The hearing officer will review the information submitted and issue a written report within thirty days (30) of the hearing.