

WHAT INFORMATION CAN THE SCHOOL USE TO MAKE A 504 ELIGIBILITY DETERMINATION?

504 coordinators are tasked with using a variety of sources to determine whether a student qualifies for 504 eligibility. Specifically, “In interpreting evaluation data and in making placement decisions, a [school] shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options...” 34 CFR Part 104.35. Below are answers to some commonly asked questions regarding student evaluation:

IN K-12

1) Does my child need a formal diagnosis in order to be evaluated for 504 eligibility¹?

ANSWER: No. The disability determination does not require a formal diagnosis – only the showing of a physical impairment that substantially affects a major bodily function. There is no legal basis under 504 to require a medical diagnosis. However, evaluation processes used by the school would typically need to be more thorough and involved to proceed without a diagnosis.

2) Can the school make a parent provide a diagnosis?

ANSWER: No. The school is supposed to use a variety of sources. If the school district thinks a diagnosis is needed, it is obligated to pay for the diagnosis and cannot make the parent pay for the diagnosis.

3) Can the school refuse to start the 504 process without a medical diagnosis or doctor’s letter?

ANSWER: No. The Office for Civil Rights (OCR) has determined that a school district had violated Section 504 by requiring that a parent provide a medical diagnosis that her son had ADHD before the District developed a 504 Plan. *South Monterey County (CA) Joint Union High School District 112 LRP 28705 (OCR 2012)*.

4) Can the school speak with my child’s doctor without my consent?

ANSWER: Usually, no. Federal Law prevents school officials from sharing sensitive and personally-identifying information with other persons like doctors. There are exceptions, such as when there is an emergency situation or if the school needs to clarify an existing diagnosis.

5) Does the school need my consent in order to conduct an evaluation?

ANSWER: Yes. Although Section 504 laws and regulations do not require this, OCR has determined that a school must get written parental consent before conducting an evaluation under 504.

6) What happens if I refuse to give my consent?

ANSWER: Because a school has a “child find” obligation, they can appeal to the Department of Education to get permission to override the parent to conduct the

evaluation. Sometimes schools want to issue subpoenas for a child's medical records without the parents' consent. However, the school must get permission either from a court or the DOE before they can subpoena the records and must prove a need to have the records.

7) Can a school require more than just a doctor's note?

ANSWER: Yes. The school is tasked with using a variety of sources in its consideration. The school is obligated to conduct an evaluation – they can use information given to them from a parent (like a doctor's note of diagnosis) or the school can conduct an evaluation at their own expense. If the parent does not consent to the school conducting its evaluation, the school can appeal to the Department of Education to override the parents' wishes.

8) Can the school require that the evaluation be conducted by specific individuals with specific training?

ANSWER: Usually no unless the school shows a specific need for the information to come from a specific source. A school cannot refuse to review and consider evidence simply because the provider lacks certain qualifications. This would be seen as a tool used by the school to screen would screen out applicants from receiving services. For example, if a parent with a student with food allergies submits evidence from a pediatrician diagnosing or describing the allergy, the school cannot refuse to consider this evidence and insist that it must come only from a board-certified allergist as this would tend to screen out students who do not have access to allergists. The school would have to show a specific reason why the allergist was needed and that requiring the allergist evidence would not diminish the capacity of students to receive services. *Guckenberger v. BU*, 8 F. Supp. 2d 91 (D. Mass. 1998).

9) Is there one type of evaluation criteria that is always necessary to be considered?

ANSWER: No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination. Evaluation materials under §504 must be tailored to assess specific areas of education need.

10) Does all data included in the evaluation process need to be given equal weight? Does a 504 team have to place more weight on things like doctor recommendations?

ANSWER: The weight of the information is determined by the committee given the student's individual circumstances. The committee is not compelled to give one type of information more weight than another.

11) Can the school require a recent evaluation if your diagnosis is too old?

ANSWER: No. Consider this example: BU required all students who applied for accommodations had to be retested every three years, and those who had been tested prior to the three years would need their testing updated. The court held this was discriminatory because it illegally screened out or tended to screen out qualified students from disability support services. BU could not show a compelling need for the retesting.

The school cannot ask for more information than needed to make the evaluation – the requests must be tailored to the disability itself. Schools should not place further constraints on individuals who are able to be found eligible by asking for unnecessary or irrelevant information. Such requests (like requesting a student’s entire birth to date medical record) may be seen as a method to screen out certain students or meant to intimidate.

12) Does the parent have the right to participate in the evaluation process?

ANSWER: No, but most schools realize this is the best practice. If a parent disagrees with any decisions the 504 team makes, he or she can appeal the decision by asking for an impartial hearing with the Department of Education.

13) What if the school says “We don’t do 504’s” or the school doesn’t follow the proper procedural safe guards?

ANSWER: A parent can file a complaint with the Office of Civil Rights with the US Department of Education to ensure the school is compliance with the 504 rules.

¹ In post-secondary education, students are not entitled to a free and appropriate public education (FAPE) and there is no “child find” requirement. Thus, a college or university can require a student to provide a diagnosis.

****Please be aware that this is just a broad overview; as noted, each case is evaluated on its own merits. This is not intended to be legal advice or to establish a lawyer/client relationship. Please call 781-569-5369 for help with your specific situation.