

Bureau of Special Education Appeals (BSEA)

If the parent and school cannot agree on services for the child, the parent may request either **mediation** or a **due process hearing** at the Bureau of Special Education Appeals (BSEA). The BSEA is an administrative division of the Massachusetts Department of Elementary & Secondary Education (DESE) that resolves disputes between parents and school districts.

As a practical matter, prior to considering a hearing at the BSEA, the parent should have evidence that the child needs the services the parent desires. Both the mediation and hearing processes are intended to be accessible to families without legal representation. The hearing process is more adversarial and formal than the mediation process. At a hearing, similar to a court trial, the parents have a right to present documents and witnesses in support of their position.

The BSEA may be contacted at:

Bureau of Special Education Appeals
One Congress Street, 11th Floor
Boston, MA 02114
Phone: 617-626-7250
<http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/>

Court

Section 504 may also be enforced through a private lawsuit filed in federal court. It is not necessary to file a complaint with a federal or state agency or to receive a "right to sue" letter before going to court. Section 504 allows courts with the appropriate discretion to award attorney's fees.

What if I need further assistance and information regarding Section 504?

Program Quality Assurance (PQA)

The Massachusetts DESE's Program Quality Assurance Services (PQA) can provide additional assistance and information regarding the implementation of section 504. The PQA's Educational Specialists also have the capacity to investigate complaints about a school's failure to develop Section 504 plans or to deliver the accommodations called for by the plan.

Concerns must be presented to the PQA within one year from the date of the alleged violation. The PQA cannot address issues regarding FAPE and 504 plans at the same time that the issue is the subject of a BSEA proceeding or an OCR complaint.

The PQA may be contacted at:

Program Quality Assurance Services
Massachusetts Department of Elementary
& Secondary Education
75 Pleasant Street
Malden, MA 02148
Phone: 781-338-3700
www.doe.mass.edu/pqa

Sample Accommodations:

- Modified homework, class work, and tests
- Extra time for homework, class work, and tests
- Extra set of books for home
- Preferential seating close to source of instruction
- Assistance when moving about the building
- Grading based on individual progress or effort
- Test retake for better grades
- Visual aids
- Test directions read orally
- Use of calculator
- Table of facts for reference
- Frequent breaks
- Behavior Intervention Plan

For more information call:

Children's Law Center of MA
298 Union Street
Lynn, MA 01901
781-581-1977 or 1-888-543-5298
781-598-9364 (fax)
www.clcm.org



Phone assistance is available during business hours.
Please call the main line and request to speak with an intake worker.

**The CLCM is supported in part by the
Massachusetts Legal Assistance Corp.,
Massachusetts Bar Foundation,
and
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of
Massachusetts Bay and Merrimack Valley**

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504 Plans/Individual Accommodation Plans



**CHILDREN'S LAW CENTER
OF MASSACHUSETTS**



What is Section 504 of the Rehabilitation Act of 1973?

Section 504 is a federal civil rights law that prohibits discrimination by federally funded institutions, such as public schools, against individuals with disabilities. Section 504 ensures that a student with a disability has equal access to education by providing accommodations for the student. Students who qualify for a 504 plan cannot be denied the opportunity to participate in any aid, benefit, services, and/or activities that are available for students without disabilities. This includes school sponsored non-academic and extracurricular services, and activities.

Who can refer a student for a 504 plan?

The 504 plan process may be initiated by a parent's written request or the school's referral for evaluations when the student is having academic, social, or behavioral problems that limit one or more major life activities. Major life activities include, but are not limited to walking, seeing, hearing, speaking, and learning. In addition, the district must believe that the student needs additional supports in the regular education classroom in order to make progress. Section 504 requires consent from the parents prior to completing evaluations.

How does a student qualify for a Section 504 plan?

In order to be eligible for a 504 plan a student must attend a school that receives federal financial assistance. In addition:

1. the student must be of school age;
2. the student must have a record establishing a mental, psychological and/or physical disability (includes disabilities affecting behavioral controls); and
3. the disability must substantially limit one or more major life activities.

Students may be eligible for a 504 plan if a temporary disability limits a major life activity.

How is a 504 plan different from special education?

In order to be found eligible for special education services, a student must be diagnosed with a disability that impairs their ability to make effective progress in school and thus requires specialized instruction and/or related services in order to make such progress.

Unlike a special education student, a student with a 504 plan is able to make effective progress in school without the need for specialized instruction and/or related services. However, he or she requires accommodations in order to gain equal access to instruction and/or the school facility. A student's 504 plan will provide accommodations that allow a student with a major life activity impairment to have the same level of access to the instruction, school activities, and the school building as students without disabilities.

What kind of evaluations will the school complete?

Schools are required to establish standards and procedures for evaluations and placement. These standards and procedures may be found in your child's student handbook. The tests and evaluations must be administered by trained personnel in the specific areas of need. These tests should be completed within a reasonable period of time.

How often should a student be evaluated for purposes of Section 504?

School districts must establish procedures for periodic evaluations of students with 504 plans. The Office of Civil Rights suggests evaluating students every three years or sooner if requested by the parents and/or teachers.

Who determines eligibility?

Each school district must appoint a Section 504 coordinator to assist parents and the school. The eligibility decision must be made by a group of individuals familiar with the child, who can provide meaning to the evaluations, and who can provide information regarding placement and accommodations options. Parents are not required members of this group. However, the parent must receive notice of the school's proposed actions.

What kind of accommodations/placements are available for students with 504 plans?

For purposes of a 504 plan, a student may remain in the regular education classroom when provided individual accommodations ensure that the student will have equal access to the same results, benefits, and achievements as students without disabilities (See back page for examples of accommodations).

What rights does Section 504 provide for students?

Free and Appropriate Education in the Least Restrictive Environment:

Federally funded schools must provide a free and appropriate public education in the least restrictive environment to all students who have a disability. The right to a **Free Appropriate Public Education** (FAPE) generally means that children who have disabilities, including those suspended or expelled from school, have the right to be educated at public expense, in a manner appropriate to meet their unique needs. **Least Restrictive Environment** refers to the right of students with disabilities to be educated to the extent possible with children who do not have disabilities.

Discipline

A school may discipline a student on a 504 plan for fewer than 10 days in the same way they would discipline students without disabilities. If a Section 504 student is subject to discipline (i.e. suspensions or expulsion) for more than 10 days, a **manifestation determination** meeting must be held.

A manifestation determination meeting brings together the 504 team to assess whether the student's behavior that led to discipline is linked to their disability and/or a failure to implement their 504 plan. If the student's behavior is a manifestation of their disability, the student should be allowed to return to their school placement. If the school determines the behavior is not a manifestation of the student's disability, the student will be subject to the same disciplinary actions that apply to students without disabilities.

Procedural Safeguards

School districts are required to establish and implement procedural safeguards with respect to identification, evaluation and placement procedures. The procedural safeguards include:

1. *Notice*: Parents have the right to receive prior notice of evaluations and meetings as well as notice of the results and actions taken by the 504 team.
2. *Examine Relevant Records*: Parents have the right to review the documents and evidence utilized by the 504 team to determine eligibility, placement, and accommodations.
3. *Impartial Hearing*: Parents have the right to file a discrimination complaint against the school district. Parents have the opportunity to participate in the hearing and to have representation of an attorney, at the family's own cost.
4. *Review*: Right to appeal decision from hearing.

Who enforces Section 504?

Office for Civil Rights (OCR)

OCR is part of the U.S. Department of Education and enforces section 504. An individual may file a formal complaint with OCR if a school that receives federal assistance discriminates against a student on the basis of their disability. Discrimination claims do not include claims regarding placement or 504 plan content, as long as the school followed the procedural requirements. A complaint must be filed within 180 days from the date of the alleged discrimination.

If you wish to file a complaint with OCR, please contact:

Office of Civil Rights, Boston Office
U.S. Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921
Phone: 617-289-0111, Fax 617-289-0150
Email: OCR.Boston@ed.gov
www.ed.gov/ocr/complaintprocess.html