

Q&A: Eligibility of Students under Section 504 and the IDEA in K-12 Educational Settings

Who is eligible for Section 504 protection in schools¹?

There is no comprehensive list of disabilities that qualify a person for protection. Any person is eligible who:

- Has a **physical or mental impairment** that **substantially limits one or more major life activities**;
- Has a **record** of such an impairment; *or*
- Is **regarded as** having such an impairment.

What is considered a physical or mental impairment?

A physical or mental impairment is any **physiological condition**, cosmetic disfigurement, or anatomical loss **affecting one or more of the following body systems**:

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| <ul style="list-style-type: none"> • Neurological • Musculoskeletal • Special sense organs • Respiratory (including speech) organs • Cardiovascular • Reproductive | <ul style="list-style-type: none"> • Digestive • Genito-urinary • Hemic and lymphatic • Skin • Endocrine |
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Physiological:
deals with the normal functions of living organisms and their parts or systems

Or, any **mental or psychological condition**, such as:

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| <ul style="list-style-type: none"> • Intellectual disability • Organic brain syndrome | <ul style="list-style-type: none"> • Emotional or mental illness • Specific learning disabilities |
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What is a major life activity?

Examples of major life activities include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, eating, learning, and working. This list is not comprehensive.

What does it mean to have a record of an impairment?

Having a record of impairment means there is a **history** of a mental or physical impairment that substantially limits one or more major life activities. This includes having been **misclassified** as having a mental or physical impairment. For example, a person that undergoes treatment for cancer has a record of an impairment, even if they are in remission.

What does it mean to be ‘regarded as’ having an impairment?

To be ‘regarded as’ having an impairment, you must:

- Have a physical or mental impairment that does not substantially limit a major life activity but that is **treated by a school** as constituting such a limitation;
- Have a physical or mental impairment that substantially limits a major life activity **only as a result of the attitudes of others** toward such impairment; or
- Not actually have a physical or mental impairment but are **treated by a school** as having an impairment.

¹ In this document, “school” is a term used to include public K-12 schools, including charter schools.

However, the acting party must ‘regard’ the disability as a disability that qualifies under Section 504 in order to qualify. For example, if a student has a large facial birthmark and other students bully her because they mistakenly believe she has leprosy, the student would likely be protection by Section 504.

What if my impairment is minor or temporary, like a broken bone?

Section 504 **does not cover** transitory and minor impairments. Therefore, if an impairment is minor *and* it has an actual or expected duration of six months or less, the impairment does not make a person eligible under Section 504. However, conditions that are in remission may not fall under transitory and minor (see below for more information).

Transitory: Not permanent

What if I use aids, medications, or medical devices to help manage my impairment?

If you have found aids, medications, or devices that help manage an impairment, that can be very beneficial! However, when determining eligibility, **supports or mitigating measures may not be considered in the decision**. Therefore, eligibility will be looked at as though the mitigating measure does not exist. For example, if you use a wheelchair that allows mobility, the wheelchair cannot be a part of the eligibility decision. Therefore, the decision would be based on your mobility capability *without* a wheelchair.

Examples of mitigating measures include hearing aids, medication, prosthetic devices, crutches, and wheelchairs. The *only* mitigating measures that can be considered in determinations are *ordinary* eyeglasses and contact lenses.

What if I have a condition but it is in remission?

If you have a condition that is episodic or in remission, the eligibility **decision should be made based on when the condition is active**. If the condition substantially limits a major life activity when active, you are eligible under Section 504.

Examples of conditions that may be episodic or in remission include epilepsy, hypertension, asthma, diabetes, major depressive disorders, bipolar disorders, schizophrenia, or autoimmune diseases.

What are some examples impairments that may qualify under Section 504?

There are **no set impairments that automatically qualify** under the statute. Each impairment is considered on an individual basis. However, some **examples of possible qualifying impairments** include:

- Anxiety
- Asthma
- Attention-Deficit Disorder (ADD)
- Autism
- Autoimmune Disorders
- Bipolar Disorder
- Blindness
- Depression
- Diabetes
- Dyslexia
- Emotional Disturbance
- Epilepsy
- Food Allergies
- Hearing Impairment
- HIV/AIDS
- Mobility Impairment
- Multiple Sclerosis
- Orthopedic Impairment
- Post-Traumatic Stress Disorder (PTSD)
- Speech or Language Impairment

Where can I go for more information about Section 504?

- If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).
- 34 Code of Federal Regulations Section 104.3(j)
- OCR’s [Disability Discrimination](#) website
- OCR’s [Policy Guidance Portal](#)

Who is eligible for IDEA protection in schools?

In order to be a “student with a disability” under the IDEA, the student must:

- Meet the **definition of one or more categories** of disabilities; **and**
- **Need special education and related services** as a result of the disability or disabilities.

A student ‘**needs special education and related services**’ when the student requires specialized instruction in order to receive an educational benefit from the educational program. If a student only needs related services and not special education, a student does not qualify under the IDEA unless the related services qualify as ‘special education.’ A student with an impairment is not eligible for special education unless they have an educational need for such services. For example, if a student has anxiety and depression but it is not impeding academic performance, there may not be a need for special education.

What are the categories of disabilities that qualify under the IDEA?

The IDEA defines 13 categories of disabilities. These categories are the only categories recognized by IDEA, but the specific impairments included in the categories are not the only impairments recognized.

1. Autism
2. Deaf-Blindness
3. Deafness
4. Emotional disturbance
5. Hearing impairment
6. Intellectual disability
7. Multiple disabilities
8. Orthopedic impairment
9. Other health impairment
10. Specific learning disability
11. Speech or language impairment
12. Traumatic brain injury
13. Visual impairment, including blindness

How is eligibility determined?

First, an eligibility team will look at many factors to determine whether a student is eligible. The team must draw information from a variety of sources and ensure that the information obtained is documented and carefully considered. Factors the team consider include:

- Academic ability (but the team cannot rely solely on this factor)
- Frequent absences
- Ability to access the general education curriculum
- Any educational improvements resulting from specialized instruction
- The services a student is already receiving
- Aptitude and achievement tests
- Parent input
- Teacher recommendations
- Information about the child’s physical condition
- The child’s social or cultural background
- Adaptive behavior

Second, once the team has assessed a student, a group of qualified professionals, along with the parents, will decide whether the student is eligible. The parents should receive a copy of the evaluation report and the documentation of determination at no cost. This should also be provided in the parents primary language.

What if a student is doing well academically? Do they still need special education?

Maybe. While academic ability is a factor in determining whether a student needs special education, it cannot be the sole factor that an eligibility team relies on. In addition, the mere fact that a student is 'gifted' or in a 'gifted program' does not disqualify them from eligibility for special education or related services. Therefore, even if a student is excelling academically, they may still need special education and qualify under the IDEA. Eligibility under Section 504, as discussed above, may also need to be considered.

Can a student be eligible under both Section 504 and the IDEA?

Yes. A student can be dual-eligible under both Section 504 and the IDEA. If this is the case, the student should have an IEP and any accommodations that would be in a Section 504 plan should be incorporated into the IEP. Developing and implementing an IEP satisfies Section 504 requirements; however, if a student qualifies under the IDEA, the student must have an IEP. A parent cannot choose to have a Section 504 plan instead of an IEP.

Where can I go for more information about the IDEA?

- If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).
- [34 Code of Federal Regulations Section 300.8](#)
- [OSEP Memos, Dear Colleague Letters and Policy Letters \(ed.gov\)](#)