

ACCOMMODATING HEALTH NEEDS IN SCHOOL: 504 PLANS

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There are many steps that schools must take to make sure that children with health needs are supported to learn and are included in all parts of school. This fact sheet explains the rights that children with health problems have in school, including the right to be identified, evaluated, and receive an accommodations plan and the right to be free from disability discrimination. The goal is to make sure every student with a disability can fully participate in school. Accommodations help students with disabilities succeed at school and create a level playing field for the child.

WHEN IS MY CHILD ENTITLED TO SPECIAL HELP FOR A HEALTH CONDITION?

If your child has a health need, chronic condition, physical, mental, or behavioral impairment that “substantially limits” a “major life activity” and needs help to participate in or benefit from

Special Considerations

Virtual learning: While schools have returned to in-person learning, there may be other health emergencies that require students to return to virtual instruction. In these cases, a parent should request a 504 meeting to determine how their child’s educational needs can be met. Parents always have the right to disagree with their child’s proposed placement or the failure to make reasonable accommodations in school to ensure the safety of the child. The rights and advocacy tips discussed in this fact sheet apply.

COVID Compensatory Services (CCS) are services that are necessary to make up for the education disruption during the pandemic. For more information, please see ELC’s [COVID Compensatory Services](#) fact sheet.

- ➔ Your child’s 504 team should have met with you to review data on your child’s skills to compare with data from before the pandemic. **If this meeting did not occur, you can request it in writing.**
- ➔ If your child did not make meaningful progress, lost skills, or did not receive required services, the 504 team should develop a plan with you to provide CCS.
- ➔ If you disagree with the plan for CCS or no plan was created, raise this issue with your child’s school. You can take any of the advocacy steps that are described in this fact sheet about what to do when you disagree with decisions of the 504 team.

education or extracurricular programs, your child may qualify for accommodations in school. Common examples of such health needs include diabetes, asthma, as well as ADHD, depression, anxiety disorders, and mental/behavioral health conditions.

WHAT IS A MAJOR LIFE ACTIVITY?

A “major life activity” includes learning, walking, seeing, hearing, speaking, concentrating, breathing, caring for oneself, lifting, performing manual tasks, eating, sleeping, standing, bending, reading, thinking, toileting, and communication.¹ A child can also qualify because of problems with “major bodily functions” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

WHAT ARE SOME EXAMPLES OF CONDITIONS THAT ARE COVERED?

- Asthma
- Auditory/visual processing delays
- Severe allergies
- Anxiety
- ADD and ADHD
- Cancer
- Crohn’s disease
- HIV/AIDS
- Epilepsy
- Medically fragile
- Ulcerative colitis
- Diabetes
- Depression
- Dyslexia
- Oppositional defiant disorder
- Physical disabilities

WHY IS IT IMPORTANT TO IDENTIFY STUDENTS WITH HEALTH CONDITIONS?

This is important to ensure that all students receive the accommodations they need to learn and have access to the full range of educational opportunities. When schools do not recognize the health needs of a student, this can lead to incorrect disciplinary decisions, removals from school, or harmful truancy referrals due to students’ long-term physical and mental health conditions.² This is disability discrimination as the school is punishing a child based on the child’s disability.

Research shows that Black and Brown students disproportionately attend under-resourced schools, which fail to identify students who are eligible to receive these necessary accommodations.³ Moreover, within the same school, due to systemic and individual anti-Black racism, white students are consistently the racial group with the highest identification rates for disability accommodations, while Black and Brown students have far lower identification rates.⁴ This is a contributing factor leading to far higher rates of out-of-school suspension and removal of Black and Brown students with disabilities from the classroom.⁵

WHAT CAN I DO IF I THINK MY CHILD NEEDS ACCOMMODATIONS IN SCHOOL?

If you think your child needs accommodations, ask that your child be evaluated for a **504 plan**, also known as a “service agreement” or “accommodations plan.”⁶ This is an agreement between a parent and the school, describing what accommodations will be provided to your child so that your child can participate in and benefit from school activities. Section 504 of the Rehabilitation Act of

1973 is a federal civil rights law that makes it illegal for public schools and some private schools to discriminate against people with disabilities.⁷ Public schools must provide a free appropriate public education (FAPE) to all students.⁸

We suggest that you ask **in writing**. In your letter or email, explain the disability your child has and the type of help you believe your child needs. You can include copies of evaluations, records, or prescriptions. The school district must evaluate your child (or accept private evaluations) and determine whether your child qualifies for a 504 plan.

WHAT DOES A 504 PLAN INCLUDE?

A Section 504 plan lists the services and accommodations your child needs.⁹ Some examples of typical accommodations are: permitting a child with a seizure disorder to stay indoors during recess when it is hot outside; dispensing medication for a student with asthma; having a child with a vision impairment sit close to the blackboard; allowing a child with diabetes to go to the school nurse to get an insulin shot.

A 504 plan can also include services that your child needs to access school in the same way as other classmates, such as special transportation or school counseling.

DOES MY CHILD NEED SPECIAL EDUCATION SERVICES?

Not necessarily. Children with chronic health impairments or serious illnesses *may* need special education, but only if your child requires specially designed instruction or needs to learn differently. If your child qualifies for special education through an individualized education program (IEP), a school district must provide special education services, including therapies and other related services, and your child must be educated in the “least restrictive environment” with their nondisabled peers.

A child is “other health impaired” if they have a serious or continuing health problem that limits their strength or alertness in school or raises their sensitivity to the school environment — and this affects their ability to learn to the extent of requiring different instruction.¹⁰ Examples of health problems that may qualify your child for special education if they affect their ability to learn include attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), Tourette syndrome, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia.

If you think your child is eligible for special education, you can ask that the school evaluate your child. To learn more about this evaluation process, see ELC’s fact sheet [Special Education Evaluations](#). If the school agrees that your child is eligible for special education, you and the district will develop an IEP that lists the special education and other services your child needs. For more information on the special education process, see ELC’s manual [The Right to Special Education in Pennsylvania: A Guide for Parents and Advocates](#) and other publications that can be obtained from ELC’s website (www.elc-pa.org).

WHAT SHOULD I DO IF MY CHILD'S HEALTH IMPACTS ATTENDANCE?

Sometimes a child with a chronic health condition who is eligible for special education cannot attend school regularly or misses school for long periods of time. Parents and the school district should determine how the student will receive their assignments and how much in-home teaching the student needs (the minimum is usually five hours, but if more instruction is appropriate for the child, the child should receive more). Those decisions should be included in the child's IEP or Section 504 plan. Specially designed instruction can also be provided while your child is in the hospital if the child is not too ill to learn.

It is important to communicate with your child's school about all attendance issues. To learn more about school attendance and truancy, see ELC's [School Attendance and Truancy: Understanding the Basics](#).

DOES MY CHILD STILL QUALIFY FOR A 504 PLAN IF THE PROBLEM ONLY HAPPENS PERIODICALLY?

Yes. A child can be eligible even if the child's impairment only occurs periodically.¹¹ A child can even be entitled to accommodations if their illness is in remission if it would substantially limit a major life activity if it were active. However, the child would qualify for protection under the law only if the problem is likely to last or has lasted for at least six months.

Federal law also provides that a school district **cannot** consider steps that have been taken to help the child (for example, medication, a wheelchair, or a hearing aid) in determining whether the child has a physical or mental impairment that substantially limits a major life activity.¹² The one exception is if the child uses ordinary eyeglasses or contact lenses.

WHAT IF THE SCHOOL DISTRICT AND I DON'T AGREE ABOUT WHETHER MY CHILD IS ELIGIBLE FOR AN IEP OR SECTION 504 PLAN, OR THE TYPE, AMOUNT, OR LOCATION OF SERVICES NEEDED?

If you disagree with your school district over the child's eligibility or the type, amount, or location of services provided in your child's IEP or Section 504 plan, you can:

- Request mediation from the Office for Dispute Resolution (ODR): Call ODR at 1-800-222-3353 or get a mediation request form at <https://odr-pa.org/iep-ifsp-facilitation-mediation-request-form/>. The mediation system helps families with either special education issues or Section 504/Chapter 15 disputes.
- For children with Section 504 plans (also called "service agreements"): Request an informal conference with district officials by sending a written request to the principal (and send a copy to the district's director of special education). Within 10 school days of receiving your request, the district must hold the conference to try to resolve the disagreement.
- Request a formal hearing: For more information on the hearing system and other options for resolving disputes, see ELC's fact sheet entitled [Resolving Special Education Disagreements](#) at www.elc-pa.org or visit ODR's website at <https://odr-pa.org/due-process/>.

CAN A SCHOOL DISTRICT BE HELD LIABLE FOR DISCRIMINATING AGAINST MY CHILD BASED ON THEIR DISABILITIES UNDER SECTION 504?

Yes. To establish a disability discrimination under Section 504 or the Americans with Disabilities Act,¹³ a parent must demonstrate that the student: (1) has a disability or was regarded as having a disability;¹⁴ (2) was otherwise qualified to participate in school activities;¹⁵ and (3) was denied the benefits of the program or was otherwise subject to discrimination because of the child's disability.¹⁶ Claims of disability discrimination can be remedied through monetary damages.¹⁷ The standard for obtaining damages under antidiscrimination laws is significant. The discrimination must be intentional.¹⁸ Intentional discrimination can be satisfied through a showing of deliberate indifference.¹⁹ To satisfy the deliberate indifference standard, a parent must present evidence that shows: (1) The school district had knowledge that a federally protected right is substantially likely to be violated²⁰ and (2) the school district failed to act despite that knowledge.²¹ To learn more about this, see this ELC fact sheet: [Right to Damages for Disability Discrimination](#).

CAN I GET HELP FOR MY CHILD FROM ANY OTHER SOURCE?

Medical Assistance or Medicaid (MA) is the federal/state insurance program that pays for health screens and treatment services for low-income children and adults. In Pennsylvania, children with disabilities sufficiently severe to qualify for federal Social Security income benefits are eligible for MA regardless of the amount of their families' income. They will be eligible unless they have too much income in their own name. Child support and Social Security benefits are not considered the child's income and so will not be counted against them. Many children with severe physical or behavioral disabilities in Pennsylvania qualify for MA coverage. Eligible children have the right to all "medically necessary" physical and behavioral health services. Coverage includes routine medical care (such as immunizations or treatment for ordinary illness) but can also include quite specialized and costly services.

Children who qualify for MA get an "ACCESS" card, which they can use to buy a wide range of preventive and treatment services. In most counties, these children are also enrolled in a Medical Assistance HMO. For many services and items, a child's physician will need to request authorization from the HMO based on medical necessity. If families also have private health insurance, MA will require them to use their private insurance first. However, MA services must be free and promptly provided, and no copays or other additional payments can be charged to families.

Some key behavioral health services covered by MA include psychiatric hospital stays, residential treatment facilities, behavioral health rehabilitation services (the most common of which is therapeutic staff support or "TSS" — staff who provide one-on-one support to children with serious behavioral problems), medication for behavioral problems (such as Ritalin for children with attention deficit disorder), outpatient therapy, and partial hospitalization programs.

On the physical health side, some **examples** of what MA pays for include therapies, shift and intermittent skilled nursing, communication devices and other durable medical equipment, and personal care services for children who need assistance with basic activities of daily living (eating, dressing, hygiene, etc.). MA must provide eligible children with the medical services necessary to meet the child's physical and behavioral needs during the school day and provide services in the child's home, community, or school setting.

Remember, even if MA pays for a service that your child receives during the school day, if that service is needed for them to learn or attend school safely (such as a nurse or TSS support), it is important that the service be listed on their IEP.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ 34 C.F.R. § 104.3.

² *Id.*; see also Tony Fabelo et al., Council of State Governments Justice Center and Public Policy Research Institute, *Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement* (2011), https://csgjusticecenter.org/wp-content/uploads/2020/01/Breaking_Schools_Rules_Report_Final.pdf; Russell J. Skiba, *Where should we intervene? Contributions of behavior, student, and school characteristics to suspension and expulsion*, in *CLOSING THE SCH. DISCIPLINE GAP* 132 (Daniel J. Losen ed., 2015).

³ Daniel J. Losen, Paul Martinez & Grace Hae Rim Shin, *The Ctr. For C.R. Remedies At The C.R. Project*, UCLA, *Disabling Inequity: The Urgent Need For Race-Conscious Resource Remedies* 13-14 (2021), <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf> (finding that 306 districts of 1,000 or more students reported zero students eligible for 504-only in 2017-18).

⁴ *Id.*

⁵ *Id.*

⁶ 34 C.F.R. § 104.35.

⁷ 29 U.S.C. § 794.

⁸ 34 C.F.R. § 104.33.

⁹ *Id.* § 104.33.

¹⁰ *Id.* § 300.8.

¹¹ U.S. Dep't of Educ., *Frequently Asked Questions: Section 504 Free Appropriate Public Education (FAPE)*, <https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-section-504-free-appropriate-public-education-fape>; U.S. Dep't. of Educ., *The Civil Rights of Students with Hidden Disabilities and Section 504*, <https://www.ed.gov/laws-and-policy/individuals-disabilities/section-504/hiddendisabilities#:~:text=A%20student%20with%20a%20learning%20disability%20or%20impaired%20vision%20that,a%20modified%20physical%20education%20program>.

¹² *Id.*

¹³ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.

¹⁴ *Roe v. Healey*, 2023 WL 5199870, 8 (1st Cir. 2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Perez v. Sturgis Pub. Schs.*, 143 S.Ct. 859 (2023).

¹⁸ *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 265 (3d Cir. 2013).

¹⁹ *Id.* See, e.g., *Chambers ex rel. Chambers v. School Dist. of Phila. Bd. of Educ.*, 537 F. App'x 90, 96-97 (3d Cir. 2013) (finding an issue of genuine fact as to whether a district was deliberately indifferent when the school was aware that therapies were not provided, ignored parents' requests for hearings, and failed to place student in appropriate programs.); *D.C. ex rel. A.T. v. Pittsburgh Pub. Schs.*, No. 19-cv-12, 2022 WL 267359, at *12 (W.D. Pa. Jan. 28, 2022) (holding that whether district provided sufficient behavioral supports promptly enough to student with a disability must be submitted to a jury where district failed to act despite knowledge that plaintiff's 504 rights); *Beam v. Western*

Wayne Sch. Dist., No. 15-cv-01126, 2018 WL 6567722, at *7-8 (M.D. Pa. Dec. 13, 2018) (school's decision to send communications regarding child's behavioral issues but not their academic performance suggested that the school purposefully withheld this information, constituting deliberate indifference).

²⁰ *Durrell*, 729 F.3d at 265.

²¹ *Id.*