

WHAT A PARENT CAN DO IF A CHILD HAS A HEALTH NEED THAT REQUIRES ACCOMMODATIONS IN SCHOOL: 504 PLANS

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There are many steps that schools must take to make sure that children with health needs can be included in all parts of school. This fact sheet will explain the rights that children with health problems and their parents have in school.

Special Considerations

Although COVID-19 led to many changes regarding where and how students learn, the rights discussed in this fact sheet for children with health needs remain the same. Your school still must consider and plan for how your child's health needs affect access to learning.

If you have concerns about how your child's health needs may impact learning due to barriers stemming from the pandemic, you should contact the school to discuss these issues and whether your child may need a new or revised "**504 Accommodation Plan**" as discussed below.

For example, if your child has a health condition that places them at greater risk of severe illness from COVID-19, the school may need to develop or revise your child's 504 plan to address the new needs.¹ If your child receives remote instruction and has a condition that makes it difficult to sit at a computer for long periods, the school may need to develop a plan to have teachers set limits on time at the computer.

For any of these changes, we suggest that you ask for the meeting in writing, using email or some other way to show that you made the request. That meeting may be held in-person or virtually. It is helpful to provide letters or forms from doctors or other medical providers who can explain the health need.

WHEN IS MY CHILD ENTITLED TO SPECIAL HELP?

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 education or extracurricular programs, your child may qualify for accommodations in school.

WHY IS THIS IMPORTANT?

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 your child. Unfortunately, schools regularly do not recognize some students with disabilities,

particularly Black and Brown students, as being eligible to receive these necessary accommodations.² This can lead to incorrect disciplinary decisions, removals from school, or harmful truancy referrals that are due to students' long-term physical and mental 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.³ 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

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

Ask that your child be evaluated for a **504 Plan**, also known as a "service agreement" or "accommodations plan."⁴ 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.⁵ Public schools must provide a free and appropriate public education (FAPE) to all students.⁶

In your letter, 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 the 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.⁷ 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.

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 non-disabled 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.⁸ Examples of health problems that may qualify your child for special education if they affect their ability to learn are: 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 DISABILITY IMPACTS ATTENDANCE?

Sometimes a child with a chronic health problem 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.

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.⁹ A child even can 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.¹⁰ 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 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](https://www.elc-pa.org) at www.elc-pa.org or visit ODR's website at <https://odr-pa.org/due-process/>.

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. This includes routine medical care (such as immunizations or treatment for ordinary illness), but it 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 upon 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 co-pays or 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, MA pays for, among many other things: 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 in the 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 also 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 See e.g., American Diabetes Association (ADA) Safe At School Campaign [recommendations for children with diabetes](#) returning to school during COVID-19 crisis and [COVID-19 and Asthma Toolkit for Schools](#).

² DANIEL J. LOSEN, PAUL MARTINEZ, & GRACE HAE RIM SHIN, DISABLING INEQUITY: THE URGENT NEED FOR RACE-CONSCIOUS RESOURCE REMEDIES, THE CENTER FOR CIVIL RIGHTS REMEDIES AT THE CIVIL RIGHTS PROJECT, UCLA, 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).

³ 34 C.F.R. § 104.3.

⁴ 34 C.F.R. § 104.35.

⁵ 29 U.S.C. § 794.

⁶ 34 C.F.R. § 104.33.

⁷ 34 C.F.R. § 104.33.

⁸ 34 C.F.R. § 300.8.

⁹ U.S. Dep’t of Educ., *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html>.

¹⁰ U.S. Dep’t of Educ., *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html>.