



# Section 504 Protections for Students with Depression

Section 504 of the Rehabilitation Act of 1973 is a Federal civil rights law that protects students from disability-based discrimination in schools (including preschools, K-12 schools, colleges, universities, and other postsecondary institutions) that receive Federal financial assistance.

Under Section 504, a student with depression can be a student with a disability for purposes of Section 504 if the student's depression substantially limits one or more of the student's major life activities. [34 C.F.R. § 104.3\(i\)\(1\)\(i\)](#).

## ***What is depression?***

According to the [National Institute of Mental Health](#), depression is a common but serious mood disorder that can be identified by symptoms such as a persistent feeling of sadness, loss of interest in regular activities, or feelings of helplessness or pessimism. Depression can affect people differently depending on their age. Students may exhibit anxiety, irritability, or refuse to go to school, may be easily frustrated, feel restless, fatigue, or exhibit low self-esteem. College-age students may be sad, irritable, or have a negative view of life and the future. People with depression can often, but may not always, have other disabilities such as anxiety or an eating disorder and are at higher risk for suicide than those without depression.

## ***Can a student with depression have a disability under Section 504?***

Yes. A student with depression has a disability if their depression substantially limits one or more of their major life activities.

According to the Department of Justice, major depressive disorder will, in virtually all cases, substantially limit brain function, [28 C.F.R. § 35.108\(d\)\(2\)\(iii\)\(K\)](#), which is a major bodily function and therefore a major life activity under Section 504. [29 U.S.C. § 705\(20\)\(B\)](#) (incorporating [42 U.S.C. § 12102\(2\)\(B\)](#)). Depression can also, for example, substantially limit thinking, concentrating, eating, or caring for oneself, which are also major life activities under Section 504. [29 U.S.C. § 705\(20\)\(B\)](#) (incorporating [42 U.S.C. § 12102\(2\)\(B\)](#)).

Whether depression substantially limits eating or any other major life activity can be established, for example, through a clinical evaluation performed by a student's pediatrician or general physician or by a psychological evaluation using diagnostic criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM). A school may always accept that a student has a disability without any documentation or medical tests.

The Office for Civil Rights (OCR) enforces Section 504 against entities that receive Federal financial assistance from the Department of Education.

In addition to the rights and obligations discussed in this fact sheet, a child with a disability attending a public K-12 school may have additional rights under the Individuals with Disabilities Education Act. Parents also may have additional rights under that statute and its implementing regulations.

OCR also shares in the enforcement of Title II of the Americans with Disabilities Act (ADA) with the Department of Justice (DOJ), and DOJ enforces Title III of the ADA. Both Title II and Title III can also apply to schools. For information, see DOJ's ADA home page at [www.ada.gov](http://www.ada.gov) or contact DOJ at 1-800-514-0301, 1-833-610-1264 (TTY).

Under Section 504, the issue of whether an impairment substantially limits a major life activity should not demand extensive analysis. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(B), which incorporates § 2(b)(5) of the findings and purposes of the ADA Amendments Act of 2008).

The term substantially limits must be construed broadly in favor of expansive coverage, to the maximum extent permitted by the statutory language. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(A)).

An impairment does not need to prevent, or significantly or severely restrict, an individual from performing a major life activity in order to be considered substantially limiting. It is enough that an impairment substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. Additionally, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(B), which incorporates § 2(a)(7)-(8), (b)(5)-(6) of the findings and purposes of the ADA Amendments Act of 2008, and § 12102(4)(D)).

The beneficial effects of mitigating measures, such as medication, used by an individual, must be disregarded in determining whether an impairment substantially limits a major life activity of an individual. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(E)).

### ***How can depression affect a student's experience in school?***

Students with depression may:

- often seem sad or irritable;
- seem tired or lacking energy;
- have difficulty concentrating, show decreased or little interest in school or a drop in school performance;
- have decreased interest in activities they previously enjoyed; and/or
- frequently be absent or refuse to attend school.

# Section 504 Obligations for Public Elementary and Secondary Schools

## ***What must public elementary and secondary schools do to ensure students with depression receive a free appropriate public education?***

Section 504 grants elementary and secondary students with disabilities the right to a free appropriate public education (FAPE). [34 C.F.R. § 104.33](#). This includes the school's obligation to identify and evaluate a student who needs or is believed to need special education or related aids and services because of a disability. [34 C.F.R. § 104.35](#).

This obligation can be triggered, for example, by a teacher observing the symptoms of depression. The symptoms of depression are extensive and can vary by type or age, but can include, for example, any of the following:

- persistent sadness
- feelings of hopelessness or pessimism
- irritability, frustration, or restlessness
- feelings of guilt, worthlessness, or helplessness
- difficulty concentrating or making decisions
- fatigue, lack of energy, or lack of appetite and/or
- refusal to attend school.

Similarly, if a parent informs their child's school that the student has depression, and the school has reason to believe that the depression is a disability and the student needs special education or related aids and services as a result, the school would be obligated to evaluate the student.

Students who are identified as having a disability are entitled to a broad range of related aids and services, as appropriate, such as counseling or tutoring. During the course of the evaluation, the group of knowledgeable people (often referred to as a Section 504 Team) determine what a student needs in school. Students may also require certain modifications (sometimes referred to as accommodations) to meaningfully access or benefit from the school's educational opportunities, and students are not necessarily required to request such modifications. [34 C.F.R. § 104.4](#). This is true even if the student is not substantially limited in the major life activity of learning.

Section 504 may require a school to provide modifications or related aids and services. For example:

- identifying a support person such as a school counselor with whom the student can periodically meet during the school day;
- incorporating short breaks throughout the day into the student's schedule;
- providing extended time on quizzes, tests, and exams;
- allowing the student to make up work, without penalty and excusing late arrivals and absences when they miss class due to a mental health appointment or when symptoms of their depression hinder a student's ability to complete their work; and/or
- allowing the student to take medical leave from school to receive treatment.

Some modifications might only be needed while a student is in elementary and secondary school, while others might be needed throughout a student's entire educational career.

The group of knowledgeable people might also need to change the location in which a student receives their education, while always remaining mindful of the obligation to educate students with disabilities alongside students without disabilities to the maximum extent appropriate to the needs of the student with the disability. [34 C.F.R. § 104.34](#).

### ***What must public elementary and secondary schools do with respect to bullying and harassment?***

Section 504 may require a school to respond to bullying or harassment targeted at students because of their medical condition, or because they are regarded as or have a record of having a disability. [34 C.F.R. § 104.3\(i\)\(1\)\(ii\) & \(iii\)](#). Such bullying or harassment, for example, could be related to a student's outward symptoms of depression, such as difficulties they may have with social interaction, difficulty managing their emotions, or difficulty communicating.

In addition, Section 504 may require a school to respond to bullying or harassment of a student with a disability on any basis – regardless of why the student is being bullied or harassed. If the school suspects that, as a result of the effects of the bullying, the student's needs have changed such that the student may no longer be receiving FAPE, the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

For example, counseling or other appropriate related services, identified in consultation with that student's parent or guardian, may need to be offered to a student in order to address any effects, including the denial of FAPE, that the student may have experienced as a result of the harassment.

### ***Transition to postsecondary education***

Students should be aware that while public elementary and secondary schools must identify and evaluate students with disabilities, postsecondary schools are not required under Section 504 to do either. Once a student enters a postsecondary environment, in general, the student must advocate for themselves. If a student decides they want any reasonable modifications, it is generally up to the student to inform the postsecondary school of their disability and request what they need, usually to a disability services office. Once a student has made such a request, schools may request reasonable documentation that explains or supports the student's need for modifications. While students may request reasonable modifications at any time, requests made early (even before the start of the school year) are more likely to be granted in time to be most effective.

## Section 504 Obligations for Postsecondary Schools

### *What reasonable modifications could a student with depression need?*

If a postsecondary student's depression has resulted in the student having a disability under Section 504, that student may require certain reasonable modifications (sometimes referred to as accommodations) to meaningfully access or benefit from the school's educational opportunities. [34 C.F.R. § 104.44](#). These reasonable modifications must be individualized, as the needs of students with disabilities vary.

Section 504 may require a school to provide reasonable modifications. For example:

- taking quizzes, tests, or exams in a quiet place free from distractions;
- extended time on testing;
- a reduced courseload;
- allowing the student to make up work, without penalty, and excusing late arrivals and absences when they miss class due to a medical appointment or when symptoms of their depression hinder a student's ability to complete their work; and/or
- long-term voluntary medical leave from school to receive treatment.

## Section 504 Obligations of Elementary, Secondary, and Postsecondary Schools

Schools must treat students with disabilities on an individualized basis. For example, reasonable modifications must be individualized, as the needs of students with disabilities vary. For example, one high school student's treatment plan for depression might recommend the student be excused from participating in physical education activities and be given alternative assignments because their depression may prevent them from being able to participate in physical activities. Another student's treatment plan might recommend that a student who has been frequently absent due to their depression be allowed to meet with a school counselor during their first-class period to support the student's transition back into the school environment. Further, even though students with depression are at higher risk of suicide than those without depression, schools must not respond based on speculation, stereotypes, or generalizations, but rather, must individually assess each student's risk before taking any action with respect to the student.

Furthermore, even if a student with depression has a disability but does not need reasonable modifications, they would still be protected from discrimination, such as disability-based harassment or being excluded or treated differently because of their depression. For example, a student who takes a medical leave of absence from school to treat depression cannot be required to remain on leave for a specific amount of time when students without disabilities who take a medical leave of absence are not required to remain on leave for a specific period of time. Additionally, if a school believes a student has depression and excludes or otherwise discriminates against the student on that basis, the school violates Section 504, even if the student does not have depression.

## Remedies

### ***What remedies might an elementary, secondary, or postsecondary school need to provide if the school does not appropriately address a student's depression?***

If a school violates the Section 504 rights of a student with depression, the school may be required to, among other things:

- offer the student an opportunity to re-take classes, tests, or assignments with appropriate modifications if needed, and without penalty or negative consequence to the student;
- conduct an all-school environment assessment and effort to overhaul a culture of bullying or harassment;
- excuse absences incurred due to depression treatment or symptoms and correct student records regarding unexcused absences; and/or
- train faculty and staff on how depression may manifest; on addressing peer-to-peer bullying and harassment; on reducing mental health stigma; and on how living with depression may impact a student physically, psychologically, socially, and academically.

### ***What can be done if a student or parent believes a school is not meeting its obligations under Section 504?***

- Section 504 requires schools to develop and implement a system of policies and procedures to address concerns and disagreements that may develop between schools and students. [34 C.F.R. §§ 104.7, 104.36](#). Parents and students may choose to initiate proceedings in keeping with these policies and procedures.
- Students, parents, or others who would like to request technical assistance from the Office for Civil Rights (OCR), or who would like to file a complaint, may do so by contacting the [OCR enforcement office](#) that serves their State.

For more information on disability-related issues, please visit OCR's [Disability Discrimination](#) webpage.

To request language access services or resources, which may include oral technical assistance or written translation of Department information, free of charge, contact [OCR@ed.gov](mailto:OCR@ed.gov).

If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0818 or [ofe\\_eos@ed.gov](mailto:ofe_eos@ed.gov).

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