



Section 504 Protections for Students with Asthma

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

What is asthma?

According to the [Centers for Disease Control and Prevention](#), asthma causes episodes of wheezing, breathlessness, chest tightness, and nighttime or early morning coughing. When children with asthma are exposed to environmental triggers, such as dust mites or tobacco smoke, an "asthma episode" or "asthma attack" can occur. During an asthma attack a child's airways swell and can produce extra mucus, narrowing the space for air to move in and out of the lungs, making breathing difficult.

Can a student with asthma have a disability under Section 504?

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

Asthma can substantially limit the operation of the respiratory system, 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\(2\)\(B\)](#)).

Asthma can also affect an individual's breathing, which is a major life activity under Section 504. [29 U.S.C. § 705\(20\)\(B\)](#) (incorporating [42 U.S.C. § 12102\(2\)\(A\)](#)).

Whether asthma substantially limits an individual's breathing can be established by a medical examination or medical tests (such as a spirometry, an exhaled nitric oxide test, or a bronchial provocation test). But medical tests are often not required to determine that a student is substantially limited in a major life activity. For example, a student's history of past asthmatic reactions may provide sufficient information to determine that a student has asthma that substantially limits a major life activity. 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 Section 504 (such as the right to a free appropriate public education (34 C.F.R. § 104.33)) and the Individuals with Disabilities Education Act. Parents also may have additional rights under those statutes and their 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 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 asthma affect a student's experience in school?

Students with asthma may:

- be absent from school due to medical appointments;
- experience isolation from peers to avoid activities that risk triggering an asthma attack;
- have an ongoing sense of fear or stress about the possibility of an asthma attack; and/or
- experience an asthma attack, which can be life threatening, while at school.

What might a school need to do to address a student's asthma?

If the student's asthma has resulted in the student having a disability under Section 504, that student may require certain modifications (sometimes referred to as accommodations) to meaningfully access or benefit from the school's educational opportunities. [34 C.F.R. §§ 104.4, 104.44](#). 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 such as:

- permitting a student to carry and self-administer quick-relief medication through an inhaler or otherwise;
- excusing a student from activities that risk triggering an asthma attack;
- ensuring the educational environment is free of a student's asthma triggers, including during field trips and extra-curricular activities where possible; and/or
- 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 asthma hinders a student's ability to complete their work.

Furthermore, even if a student with asthma has a disability but does not need modifications, they would still be protected from discrimination, such as disability-based harassment. For example, 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\(j\)\(1\)\(ii\) & \(iii\)](#). Such bullying or harassment, for example, could be related to a student's use of an inhaler or to a student's asthma symptoms.

What remedies might a school need to provide if the school does not appropriately address a student's asthma?

If a school violates the Section 504 rights of a student with asthma, 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;
- excuse absences incurred due to asthma attacks and correct student records regarding unexcused absences; and/or
- train faculty and staff on how to keep students with asthma safe; on students' asthma action plans; on addressing peer-to-peer bullying and harassment; and on how living with asthma may impact a student physically, psychologically, socially, and academically.

What can be done if a student 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.

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_eeos@ed.gov.

This fact sheet does not have the force and effect of law and is not meant to be binding, beyond what is required by statutory and regulatory requirements. All enforcement determinations made by OCR are based on the particular factual circumstances presented in each individual case.