



Section 504: A Guide for Parents and Educators

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Over the last 50 years, the U.S. Congress has passed laws focusing on protecting people with disabilities from discrimination. Section 504 of the Rehabilitation Act of 1973 is a civil rights law designed to protect people with disabilities from discrimination while they are working or participating in federally funded programs, such as public schools.

Public schools failing to uphold the protections of Section 504 are subject to a review by the Office of Civil Rights (OCR), and if it is discovered that the school has participated in discriminatory practices, a number of penalties or remedies may be implemented to correct the problematic practices. General educators, with the support of special educators, are responsible for identifying, evaluating, and implementing Section 504 protections, services, and accommodations uniquely called for by the identified disability. Although Section 504 was passed over 40 years ago, school personnel and parents continue to struggle to understand the law's requirements and protections.

SECTION 504 AND IDEA

Students with disabilities may be eligible for special education, accommodations, and related services in schools under the Individuals with Disabilities Education Improvement Act (IDEA 2004) and/or Section 504. The primary purpose of IDEA is to guide assessment, planning, and the provision of education and related services to students with disabilities and to provide funding to states for this purpose. If you suspect that a child has a disability, it is most important to make a referral to the school's child study team so it can be determined if the child has a disability and needs services and supports under IDEA. The primary purpose of Section 504 is to prevent discriminatory practices against children with disabilities in public schools, but it does not provide any type of federal funding for this purpose. Three major differences between these two laws exist:

- *Need for special education and specialized instruction due to a disability.* IDEA recognizes that some students, because of their disabilities, will require special education and related services in order to benefit from a free appropriate public education (FAPE). One purpose of the statute is to identify students with disabilities who have this level of instructional need.
- *Age and settings for the population served.* IDEA addresses the special education needs of children birth through 21 years of age or the completion of a high school diploma, whichever comes first. Section 504 protections extend for a lifetime and apply to schools and the full scope of community environments receiving federal funding (such as work and access to public facilities).
- *Procedural regulation.* IDEA is much more specific about the rules and requirements for determining eligibility, designing and implementing programming, rights to due process, and the specific procedures that must be followed by schools. Section 504 is more general in its application and is not highly regulated, as it is not designed for programming purposes but to prevent discrimination.

Children who qualify for IDEA will also be protected by Section 504. However, it is possible for children to qualify for accommodations in schools under Section 504 but not be eligible for special education and related services as delineated in IDEA.

LEGAL PROTECTIONS OF SECTION 504

Section 504 states that:

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. (34 C.F.R. § 104.4[a])

In school settings, this means that a student who is handicapped (disabled) and eligible to participate in public school programs or activities in every other way (as defined by the eligibility criteria) may not, based solely upon his or her disability, be prevented from participating in a school program or activity. In order to understand if a student with disabilities qualifies for the protections of Section 504, it is critical to understand if that student is considered disabled under the law. Note that Section 504 uses the term "handicap." Congress has amended Section 504 and replaced the term "handicap" with the term "disability." The terms have the same meaning (34 C.F.R. § 104.3 [j] [1]).

GENERAL RESPONSIBILITIES OF A PUBLIC SCHOOL

Public schools are responsible for identifying a Section 504 coordinator, assembling a multidisciplinary team to identify students as disabled, determining appropriate placements and services, implementing the identification process, and providing any required services.

The 504 Coordinator and Multidisciplinary Team

School districts are responsible for designating the coordinator of 504 activities and the team that will carry out 504 assessments and services.

Section 504 coordinator. Generally, school districts are responsible for designating a Section 504 coordinator to design a system that properly accommodates students with disabilities to assure nondiscriminatory access to its programs. The coordinator is also responsible for notifying parents and students of their rights under Section 504.

Multidisciplinary team. A multidisciplinary team assembled by the public school is responsible for the identification and placement of the students who are determined to be disabled. The evaluation and placement team is defined very generally. It is to be composed of persons knowledgeable about the child, the meaning of the evaluation data, possible placement options, and the requirement that, to the maximum extent appropriate, children with disabilities are to be educated with children without disabilities.

Involving parents. Although the regulations do not require that the schools invite parents to Section 504 meetings, many districts choose to invite parents as a matter of policy and to forge good relationships with parents. In addition, the parents often are excellent sources of information regarding the child's impairment and suspected disability.

Determining Eligibility for Services Under Section 504

Key components of the law provide guidance to school teams in determining eligibility for a Section 504 plan.

The team must confirm that the student has a disability as defined under Section 504. A person with a disability under Section 504 is:

... any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. (34 C.F.R. §§ 104.3[j-1])

For the purposes of determining eligibility and the resulting accommodation plan and protections, the key qualifying phrases to understand in this definition are: "physical or mental impairment," "substantially limits," "major life activities," "has a record of," and "is regarded as having such an impairment."

Physical or mental impairment. A physical or mental impairment is:

... (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (34 C.F.R. § 104.3[j][2][i])

Although not an exhaustive list, students who have psychological or medical conditions such as cerebral palsy, cancer, AIDS, attention deficit hyperactivity disorder (ADHD), bipolar disorder, muscular dystrophy, or other physiological or mental conditions may meet this standard. Additionally, students who have disfigurements, such as severe bodily injuries, could also be considered impaired under this definition. Although schools commonly are approached with diagnoses from physicians or other private providers, the presence of a diagnosis is not required before a school can act upon a suspected disability. On the other hand, a diagnosis of impairment does not by itself determine whether a student is eligible for services and accommodations under Section 504.

Substantially limits. Section 504 requires that the physiological or mental impairment defined above not only be present, but also *substantially limit* the student's ability to perform a major life activity. The severity of a person's impairment often varies over time and may be mitigated by personal compensations and other factors such as medication. Sometimes the impact of an

impairment may be the result of a fluctuation in the intensity of a physical or mental condition.

It is important to note that in 2008, President Bush signed into law the Americans with Disabilities Amendments Act (ADAA). Two major changes in this Act that directly impact the interpretation and application of Section 504 include the extent to which mitigating measures should be considered and the episodic nature of an impairment. This Act, which took effect in January 2009, states that determination of whether an impairment is a disability should be made without regard for mitigating measures such as medication, medical supplies or equipment, prosthetics, hearing aids, assistive technology, or auxiliary aids and services. Additionally, the Act also notes that a person may be considered a person with a disability even when his or her impairment only limits a major life activity occasionally or is in remission. It is clear with the passage of this law that Congress intended to expand the number of individuals that would be eligible for Section 504 protections.

Major life activities. Under Section 504, major life activities include:

... functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (34 C.F.R. § 104.3[j][2][iii])

This list of functions is not meant to be exhaustive. Congress demonstrated this in the ADAA by expanding the application of these functions to include broader interpretations. For example, impairments to learning could also include problems concentrating, reading, or thinking. In schools, for accommodations to be put in place for a student, it must be demonstrated that impairment is substantially limiting a major life activity. The affected major life activity is integral to the impairment itself. For example, an impairment to the functioning of the eye may substantially impact the major life activity of seeing. Therefore, to understand the major life activity affected, a thorough understanding of the impairment is necessary.

Also integral to the determination of substantial limitation of a major life activity is the impact the impairment has within the individual's environment or setting and the corresponding demands of the environment or setting.

Impact of impairment on the student throughout the school day, within programs or activities. If the disability restricts access to a program or activity, it must be accommodated or served by the school to enable the student to access the program or activity as do other

students. Regardless of the nature or the identified impairment and disability, services and accommodations—if deemed necessary at all—will vary according to the impact of the disability on the student's meaningful access to the school program or activity. For example, a child with severe asthma that substantially limits breathing may have significant difficulty participating in a physical education class or other programs sponsored by the school that demand heavy physical exertion. Thus, the student would need accommodations to access these activities. Additionally, the student may need to be provided a quiet place for a nebulizer treatment at school with adult supervision. Similarly, a child with severe food allergies who is unable to access the lunch program as other students do might need to be provided allergen-free food choices during lunch, snack time, or field trips.

FAPE. The concept of "substantially limiting major life activities" may also be considered in terms of FAPE. FAPE is provided when a student with a disability has his or her needs met as adequately as nondisabled students when accessing or participating in school activities or programs. Therefore, if a student with a disability is already adequately accessing or participating in programs, then the student is receiving FAPE and needs no accommodation or services.

Has a record of/is regarded as having such an impairment. Because Section 504 is an antidiscrimination statute, the personal history of an individual should also be considered when determining if protections should extend to the individual. The phrases "has a record of an impairment" or "is regarded as having such an impairment" are intended to cover the situations where a person is treated as a person with a disability regardless of whether he or she has actually been *identified* as having a disability.

Procedural Protections

Once a student is identified as having an impairment under Section 504, and it is demonstrated that the impairment substantially limits a major life activity, then the student is considered disabled and eligible for protections, services, and reasonable accommodations. The procedural protections include notice of the actions taken or to be taken by the school district regarding the child and the disability, an opportunity for parents to examine relevant records, a right to a due process hearing, and a right to review an adverse decision.

Generally, students with disabilities are entitled to equal educational opportunities despite the disability. This equal opportunity is accomplished through a plan that provides individually designed services and accommodations to address the impact of the disability on the

school program or activity. The accommodations must address the unique educational learning or participation needs of the student in order to allow him or her to access these opportunities to a similar degree as do students without disabilities. Therefore, as with nondisabled students, there is no guarantee of achievement or performance under Section 504, only a guarantee of an equal *opportunity* to learn or participate.

IMPLEMENTING SECTION 504 SERVICES IN SCHOOLS

It is the responsibility of public school professionals to identify students who may be eligible for the protections of Section 504. To fulfill this responsibility, schools need to have in place four basic processes: (a) a system for advising parents of their rights under Section 504, (b) a process for evaluating students to determine eligibility, (c) a process for designing and implementing an Individual Accommodation Plan (IAP) for all students, and (d) a system for reviewing student progress and revising or terminating a plan.

Step 1: Advise Parents of Their Rights Under Section 504

School personnel need to provide both general and individual notice for the identification, evaluation, and placement of a student with a disability. Generally, the public notice is established by district policy. The individual notice is often in writing as well. When a student is suspected as having a disability and the school is considering placement, a notice of this meeting is warranted. Although not required, it is best practice for this notice of meeting to be in writing.

School personnel should also inform parents of their rights in other areas that may be important to students receiving protections under Section 504. For example, students with disabilities are subject to the same disciplinary standards and procedures as students without disabilities. However, for disciplinary removals from school of longer than 10 consecutive school days or removals of more than 10 accumulated days that form a pattern (e.g., suspensions), the multidisciplinary team must determine whether the misconduct for which a student is being disciplined is related to the student's disability.

Step 2: Conduct an Evaluation to Determine Eligibility

School districts must have a system in place whereby students with suspected disabilities can be identified under Section 504 by a multidisciplinary team. If a student is suspected of having a disability, the multidisciplinary team must identify if there is a physical or mental impairment, determine if and how the physical or mental impairment substantially limits the major life activity of learning, and determine the necessary accommodations

and/or services to ensure that a student is able to receive a FAPE in the least restrictive environment (LRE). The team must consider information that has been obtained through assessments administered by qualified personnel and that is valid, reliable, and unbiased. This information must be current and sufficient in scope to make a well-informed decision.

An assessment that is not part of the district-wide standard assessment given to all students may require parental consent. Often, certain assessment or diagnostic information is provided by the parent while the school provides existing assessment information regarding school performance and progress. Many school districts choose to obtain consent in order to form a partnership with the parent and accurately and fairly determine the nature and the impact of any suspected impairment. Further, parent consent is required if the school's assessment is part of the determination of eligibility for special education services.

Step 3: Develop and Implement an IAP

Once a student has qualified for Section 504 protections and services, the multidisciplinary team is required to convene and develop an IAP based on assessment data supporting the identification of impairment. This plan may take a variety of forms but generally should follow the evidence that the impairment substantially impacts a major life activity and provide services and/or accommodations addressing this impact to enable the student to have his or her needs met as adequately as students without disabilities. The IAP must be reviewed periodically, usually annually.

Reasonable accommodations. Section 504 accommodations or services must meet the needs of the person as adequately as the needs of nondisabled individuals are met, but should not fundamentally alter the nature of the activity or provide a student with an unfair advantage. If the accommodations do fundamentally alter the activity, it is not discriminatory to objectively indicate on the plan how the accommodation modifies the nature of this program.

Accommodations are designed and implemented to afford the student an "equal opportunity" or "equal access." Reasonable accommodations should be selected that are specific and unique to the disability. Examples: If a disability affects eyesight, use larger fonts in written texts. If a disability affects pincer grasp and thereby writing, use pencil grips to assist the student. If a student struggles with inattention, use preferential seating to enable the teacher to limit distractions, monitor student engagement, and provide redirection cues as needed.

Testing accommodations. It is important to remember that no testing accommodations should be made that either interfere with valid measurement of what is being tested or alter the nature of the activity or examination. For example, if a student is taking a reading test, it is unlikely that reading the test aloud to the student would be an appropriate accommodation, because doing so would alter the nature of the activity being evaluated and, therefore, not provide a valid measure of the skill tested (i.e., reading).

Step 4: Periodic Review of the Plan and the Student's Eligibility

Once a plan has been developed, it is critical that the team periodically review the plan to determine (a) if there is an impairment that continues to substantially limit a major life activity, (b) if the plan is still needed to protect a student from discrimination, and (c) if the plan continues to afford a student an equal opportunity for learning. This review will also take into account new circumstances such as mitigating factors, a change in the degree or nature of the impairment, or a new classroom or other school circumstances that could alter the impact of the impairment and the necessary accommodations.

If it is determined that a student is no longer eligible or a plan is no longer needed, then the team must terminate the IAP. If it is determined that a student continues to be eligible and still in need of an IAP, then the team should carefully review and revise the plan accordingly.

Finally, Section 504 does not define specifically what constitutes "periodic reevaluation." However, the Office of Civil Rights (OCR; 2009) has specified that the guidelines for reevaluation under IDEA 2004 are sufficient to meet the standard of Section 504 reevaluation. Further, OCR has also noted that any significant change in placement (i.e., exclusions from school greater than 10 days, the transfer of a student, termination, or major modification of a related program or service) could all warrant a reevaluation.

REFERENCES

- Americans with Disabilities Act. 42 U.S.C. § 12101 (1990). Available: <http://www.ada.gov/pubs/ada.htm>
- Americans with Disabilities Act Amendments of 2008. Public Law 110-325. Available: <http://www.ada.gov/pubs/ada.htm>
- Individuals with Disabilities Education Improvement Act. 20 U.S.C. §§ 1400-1485 (2005).
- Office of Civil Rights. (2009, March 23). Protecting students with disabilities: Frequently asked questions about Section 504 and the education of

children with disabilities. Retrieved November 18, 2009, from <http://www.ed.gov/about/offices/list/ocr/504faq.html>

Section 504 of the Rehabilitation Act. 29 U.S.C. § 794 (1973). Available: <http://www.ed.gov/about/offices/list/ocr/504faq.html>

RECOMMENDED RESOURCES

Print

Huefner, D. S. (2006). *Getting comfortable with special education law: A framework for working with children with disabilities* (2nd ed.). Norwood, MA: Christopher Gordon Publishers.

Jacob, S., & Hartshorne, T. S. (2007). *Ethics and law for school psychologists* (5th ed.). New York: Wiley.

Zirkel, P. A. (2009). The ADA and its effects on Section 504 students. *Journal of Special Education Leadership* 22(1), 3-8.

Online

Office of Civil Rights, 34 C.F.R., Part 104, Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance: <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

Contains federal regulations pertaining to Section 504. LD Online: <http://www.ldonline.org>

Contains a variety of resources for parents and schools addressing many aspects of IDEA and Section 504.

Wrightslaw: <http://www.wrightslaw.com>

Wrightslaw is a legal database that can assist parents in finding basic information on a variety of educational law topics. See <http://www.wrightslaw.com/info/sec504.summ.rights.htm> for information specifically dedicated to the key differences between IDEA, Section 504, and the ADA.

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