



Section 504: A Guide for Parents and Educators

Over the last 50 years, the U.S. Congress has passed laws to protect individuals with a known or suspected disability from unlawful discriminatory practices on the basis their disability. Section 504 of the Rehabilitation Act of 1973 is a civil rights law designed to protect individuals with known or suspected disabilities from discrimination while working or participating in federally funded institutions such as public schools, colleges, universities, and local and state educational agencies.

Federally funded institutions failing to uphold the protections of Section 504 are subject to a review by the U.S. Department of Education’s Office of Civil Rights (OCR). If, for example, a school district has knowingly or unknowingly engaged in unlawful discriminatory practices, then penalties or remedies may be implemented to correct these discriminatory practices. General educators, with the support of special educators, are responsible for identifying, evaluating, and implementing Section 504 protections, services, and accommodations in accordance with the identified disability. Although Section 504 was passed in 1973, there exists ongoing confusion understanding the breadth and scope of the law’s specific 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) of 2004 or Section 504. The primary purpose of IDEA is to guide assessment, planning, and the provision of education and related services to individuals with disabilities and to provide funding to states for this purpose. When a student is either known to have a disability or is suspected of having a disability, a referral to the school’s student study team may be made to determine whether the student may benefit from services and supports under IDEA. By contrast, Section 504 is meant to prevent discriminatory practices against children with disabilities in public schools, but federal funding is not provided for this explicit purpose. Three major differences between Section 504 and IDEA include:

- *Need for special education and specialized instruction because of a disability:* The IDEA recognizes that some students, because of their disabilities, may require special education and related services via an Individualized Educational Program (IEP) to benefit from a free and appropriate public education (FAPE). A guiding purpose of the statute is to identify students who require additional instructional services extending beyond the general education setting. By contrast, a 504 plan does not typically include educational supports beyond accommodations within the general education setting. However, there are occasions where the 504 team may consider direct or indirect services within a specific area of need (e.g., speech, language, occupational therapy, and psychological services).
- *Age and settings for the population served:* IDEA addresses the special education needs of individuals ages birth through 21 years or the completion of a high school diploma, whichever comes first. By contrast, Section 504 protections extend across the lifespan and apply to schools and any community agency receiving federal funding.
- *Procedural regulation:* IDEA is 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, by comparison, more general in its application and not as highly regulated as IDEA. This is because Section 504 is intended to prevent discriminatory practices (i.e., reducing disciplinary infractions on the basis of a disability) and not solely designed for programmatic purposes (i.e., placement in educational settings specifically designed to remediate an academic, cognitive, or behavioral skills deficit).

LEGAL PROTECTIONS OF SECTION 504

Section 504 states that:

No otherwise qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency. [34 C.F.R. §104.4. (a)]

In school settings this means that an individual with a disability is eligible to participate in *all* public school programs or activities and may not, based solely on their disability, be prevented from participating in a school program or activity. In order to understand if a student with a disability 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*, but Congress has amended Section 504 and replaced the *handicap* with *disability*. Accordingly, the terms *handicap* and *disability* share 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 (often a school administrator), assembling a multidisciplinary team to identify students with a known or suspected disability, determining appropriate placements and services, implementing an identification process, and providing required services.

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. 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 responsible for notifying parents and students of their rights under Section 504. A multidisciplinary team assembled by the school is responsible for the identification and placement of students with a known or suspected disability. The evaluation team is composed of school staff with knowledge of the student, the meaning and interpretation of evaluation data, possible placement options, and the requirement that, to the maximum extent appropriate, students *with* a disability are to be educated within the same environments as students *without* a 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 has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

“Physical or mental impairment.” A physical or mental impairment is: 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, an acquired immunodeficiency syndrome (AIDS), attention deficit hyperactivity disorder (ADHD), bipolar disorder, muscular dystrophy, or other physiological or mental conditions may meet this standard. Notably, a mere diagnosis of impairment does not, by itself, dictate eligibility for services and accommodations under Section 504.

“Substantially limiting.” Section 504 requires that the physiological or mental impairment defined above *substantially limit* the student’s ability to perform a major life activity. The severity of an individual’s impairment may vary 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.

“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 exhaustive, which Congress demonstrated in the ADA by expanding the application of these functions to include broader interpretations. For example, impairments to learning could also include difficulty concentrating, reading, or thinking. In schools, for accommodations to be put in place for a student, there must be a demonstrable impairment that substantially limits a major life activity.

How does the impairment affect 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. For example, a child with severe asthma that substantially limits breathing may have difficulty participating in a physical education class. Thus, the student would need accommodations to access these activities.

Is the student receiving a free appropriate public education (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 their needs met as adequately as nondisabled students when participating in school activities or programs. Therefore, if a student with a disability is already adequately participating in programs, the student is receiving FAPE.

“Having a record of or being regarded as...” 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 “having a record of an impairment” or “being regarded as having an impairment” are intended to cover situations where a person is treated as a person with a disability regardless as to whether they have actually been *identified* as having a disability.

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 the following four processes:

Step 1: Advising 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. 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 generally considered best practice for this notice 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 caused by or has a direct and substantial relationship to the disability. This process is called a manifestation determination.

Step 2: Evaluation to Determine Eligibility

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

accommodations or services to ensure that the student is receiving FAPE. The team must consider information obtained through assessments administered and interpreted 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, 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 to form a partnership with the parent and accurately and fairly determine the nature and the impact of any suspected impairment.

Step 3: Development and Implementation of an Individual Accommodation Plan

Once a student has qualified for Section 504 protections and services, the multidisciplinary team is required to convene and develop an Individual Accommodation Plan (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 or accommodations to enable the student to have their needs met as adequately as students without disabilities. The IAP must be reviewed annually.

Reasonable accommodations. Section 504 accommodations or services must meet the needs of the person as adequately as are the needs of nondisabled individuals, 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 permissible to document how the accommodation modifies the nature of the program.

Reasonable accommodations should be selected that are specific and unique to the disability. For example, if a disability affects eyesight, larger fonts in written texts may be used. If a student struggles with inattention, preferential seating may limit distractions, allow the teacher to monitor engagement, and provide redirection cues as needed.

Test accommodations. Testing accommodations shall neither interfere with valid measurement of what is being tested nor alter the nature of the test. For example, if a student is taking a reading test, then reading the test aloud to the student would not 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 being assessed (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 consider new circumstances, such as mitigating factors, a change in the degree or nature of the impairment, 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 the IDEA are sufficient to meet the standard of Section 504 reevaluation. Furthermore, OCR has also noted that any significant change in placement (e.g., 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 Amendments of 2008 and Americans with Disabilities Act of 1990 (42 U.S.C. 12101). <http://www.ada.gov/pubs/ada.htm>
- Final Report of the Federal Commission on School Safety, December 18, 2018. <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>
- 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. <http://www.ed.gov/about/offices/list/ocr/504faq.html>
- Office of the Press Secretary. (2016, December 9), White House Report: The continuing Need to Rethink Discipline. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794. Available: <http://www.ed.gov/about/offices/list/ocr/504faq.html>
- U.S. Department of Justice & U.S. Department of Education. (2021). Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

RECOMMENDED RESOURCES

Print

- Huefner, D. S. (2006). *Getting comfortable with special education law: A framework for working with children with disabilities* (2nd ed.) Christopher Gordon Publishers.
- U.S. Department of Education, Office for Civil Rights, Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (December 2016).
- 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 CFR, 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 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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