

**Part 10: SECTION 504 OF THE REHABILITATION ACT OF 1973**

INTRODUCTION AND OVERVIEW

Section 504 of the Rehabilitation Act of 1973 was enacted to eliminate discrimination on the basis of disabilities in any program or activity receiving federal financial assistance. As such, **Section 504 is a system-wide responsibility, not solely a special education concern.** Section 504 is a federal law which impacts the education of students with disabilities and the employment of individuals with disabilities in the public school setting. Remember that your district must designate a 504 and ADA coordinator. The regulations specifically prohibit a recipient from:

Denying a qualified individual with disabilities the opportunity to participate in or benefit from any aid, benefit or service;

Affording a qualified individual with disabilities an opportunity to participate in or benefit from any aid, benefit or service that is not equal to that afforded to others;

Providing a qualified individual with disabilities with an aid, benefit or service that is not as effective as that provided to others;

Providing different or separate aids, benefits or services to individuals with disabilities or to any class of individuals with disabilities unless such action is necessary to provide qualified individuals with disabilities with aids, benefits or services that are as effective as those provided to others;

Aiding or perpetuating discrimination against a qualified individual with disabilities by providing significant assistance to an agency, organization, or person that discriminates against a qualified individual with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disabilities in providing any aid, benefit or services to beneficiaries of the recipient's program;

Denying a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards; or

Otherwise limiting a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service.

The school must consider Section 504 as well as IDEA/Article 7 when determining whether a student is disabled and/or in need of special services. The definition of an individual with disabilities under Section 504 is much broader than the specific categories of disabilities under IDEA, especially given the revisions in the Americans with Disabilities Act (ADA). **Thus it is possible that a student may be an individual with a disability under Section 504 but not be individual with disabilities under IDEA.**

Section 504 does not have disability categories, and disabilities under 504 are not related solely to educational performance.

Section 504 differs from IDEA in its policy and procedure requirements. Unlike IDEA, Section 504 provides general requirements which permit recipients to establish procedures to meet these requirements.

To become eligible for services and protections under Section 504, a student must be determined, as the result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities. Please note that the physical or mental impairment no longer must limit the student's learning.

The ADA Amendments Act of 2008 (ADAAA) states that “the definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”. 42 USC 12102 §3(4)(A). Section 504 defines an individual with disabilities as a person who

has a physical or mental impairment which substantially limits one or more major life activities (when the student's important life activities are restricted regarding the conditions, manner, or duration under which they can be performed in comparison to most people);

has a record of such an impairment; or

is regarded as having such an impairment.

The ADA amendments add to the above that an impairment is a disability...if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. The disabilities include:

caring for oneself  
seeing eating  
walking sitting  
lifting speaking  
learning  
concentrating  
reaching bending  
working  
performing manual tasks  
standing sleeping  
breathing  
reading  
thinking  
breathing interacting  
with others breathing

reading

thinking interacting  
with others

Requests for accommodations must be evaluated without regard to steps an individual might take to minimize or ameliorate the adverse effects of medical conditions, with the exceptions of eyeglasses, contact lenses, and conditions that last no longer than six months (sprained ankle, minor infections, etc.). Therefore, medication, medical supplies, equipment, appliances, low-vision devices, prosthetics, hearing aids and cochlear implants, mobility devices, and assistive technology may provide supports that allow the student to perform without additional supports must be considered in determining whether the student demonstrates a substantial limitation on the major life activity.

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 any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Diseases or impairments that include orthopedic, visual, sensory (speech, hearing, allergies), neurological (epilepsy), muscular (muscular dystrophy, cerebral palsy, multiple sclerosis), diabetes, heart disease, cancer, HIV, etc. are qualifying conditions when they involve substantial limitations.

Major Life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, reading, concentrating, thinking, working, learning, paying attention, and communicating, etc.

Has a record of such an impairment mean the student has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Is regarded as having an impairment means the student

has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or

has none of the impairments defined above but is treated as having such an impairment.

Qualified individuals with disabilities means a student is of an age during which individuals without disabilities are mandated to provide such services.

For any student who is an individual with disabilities as defined above, the school must provide a free appropriate public education (FAPE) to the student. The student is provided a FAPE which includes either general or special education, related aids and services, as implemented by any appropriate means and are designed to meet the needs of students with disabilities as adequately as the needs of their nondisabled peers.

A student who is limited English proficient (LEP) is not eligible for Section 504 services on the basis of a language deficit. The LEP student may have disabilities that are substantially limiting and those may qualify the student for Section 504 services.

In some instances a student who is referred for an Article 7 evaluation is not eligible for such services. This student should be considered for Section 504 eligibility. An example of such a situation is a student referred because of a suspected learning disability. The evaluation may provide evidence of an attention deficit hyperactivity disorder. The multidisciplinary team representative should alert the Section 504 coordinator/designee who then either notifies the parent that a 504 conference will be scheduled or continue with the case conference membership but turn to a 504 conference to determine eligibility. At this time, if the student is not 504 eligible, the committee may refer the student back to the intervention team for continued general education programming and progress monitoring.

OCR has stated that a determination in favor of eligibility will be made in every case of students with diabetes, epilepsy, bipolar disorder, and autism.

In general, the majority of students with ADD/ADHD are effectively served in the general education classroom. Despite this, they should be referred for an assessment for eligibility for 504 services.

If the school staff provides numerous accommodations and suspects that the student needs the accommodations due to a possible disability, the student should be referred.

SECTION 504 REQUIREMENTS FOR EVALUATION AND RE-EVALUATION Each school system has a 504 coordinator who should be contacted regarding students who may be eligible for 504 rights and services.

An evaluation for 504 eligibility must be initiated for any student not already served under

Article 7 when:

- the student is expected to be hospitalized for 4 weeks or more
- the student is homebound for more than a semester
- the student is reentering school after having been temporarily placed in a private setting, i.e., medical facility, rehabilitation center. etc. the parent requests a Section 504 evaluation.

The Section 504 referral and identification process for students proceeds as follows:

A referral of a student for possible 504 eligibility is forwarded to the building principal with the following included:

- reason for referral
- intervention strategies initiated and provided
- further information needed about the student

The building principal notifies the student's parent/s of the referral by sending the Parent Notice of Section 504 Referral and meets with the parents to complete the Parent Notice: Permission for Section 504 Evaluation, obtains the parent's signature, and gives verbal and written notice of parent rights and procedural safeguards.

With the assistance of the 504 compliance coordinators, the building coordinator compiles relevant information about the student from a variety of sources to assist in the determination of 504 eligibility. This constitutes the evaluation.

The building 504 Coordinator schedules a 504 conference and sends the Section 504 Notice of Conference to the parent.

The building 504 Coordinator convenes and documents the 504 conference on the Section 504 Conference Committee Report form. The purpose of the conference is to:

- review the information obtained regarding the student;
- determine whether an Article 7 educational evaluation is warranted;
- determine whether the student qualifies as "handicapped" under 504 regulations because the student has a substantial limitation of a major life activity; determine the student's needs, identify and document the placement, aids, and services necessary to meet the student's individual educational needs as adequately as the needs of students without handicaps (Note: hospital or homebound services may be the services decided upon by the 504 committee), and develop the Alternative Learning Plan.

The 504 conference committee includes the building principal or designee (an individual who can commit resources) and persons who have knowledge about the student, the meaning of the evaluation information, and placement options.

A re-evaluation of the student will take place periodically, including when the educational services are no longer felt to meet the needs of the student and prior to any significant change in placement.

The building 504 coordinator will annually locate and identify all eligible Section 504 "qualified" handicapped children" within the school.