

Overview of Section 504 of the Rehabilitation Act of 1973

Congress prohibited discrimination against persons with disabilities in the Rehabilitation Act of 1973, in a segment most often referred to simply as "Section 504." This is a broadly worded prohibition that covers both children and adults. The principles enumerated in this section were later expanded and served as the basis for the 1990 Americans with Disabilities Act (ADA). Additionally, the ADA Amendments Act of 2008 also amended some definitions of Section 504. Section 504 of the Rehabilitation Act is a federal civil rights law and prohibits discrimination by school districts receiving federal financial assistance against persons with disabilities. Included in the U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a free appropriate public education (FAPE). These regulations require identification, evaluation, provision of appropriate services, and procedural safeguards in every public school in the U.S.

Section 504 prohibits discrimination against individuals whose physical or mental impairment substantially limits one or more major life activities, including:

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Working
- Learning

"Physical or mental impairment" was defined to mean:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculo-skeletal; 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."

(34CFR 104, p336-337)

Further, the ADA Amendments Act of 2008 clarified that:

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as-

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(11) use of assistive technology;

(111) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph-

(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

11) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.

ADA Amendments Act Sec. 4

Examples of impairments which may entitle an individual to 504 protection include:

- diseases such as AIDS, tuberculosis, or hepatitis B;
- medical conditions such as chronic asthma, diabetes, heart disease, juvenile arthritis, or seizure disorder; physical disabilities such as cerebral palsy or muscular dystrophy;
- Attention deficit disorder with or without hyperactivity;
- alcohol/drug addicted students (does not protect individuals who are currently using drugs or alcohol);
- students with temporary disabilities; and
- students with pregnancy related complications.
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It is important to remember that the presence of one of these conditions in itself does not qualify an individual for 504 protection. The impairment must also cause a substantial limitation of a major life activity.

Importantly, the federal regulations for Section 504 went further by prohibiting discrimination against any person who **"has a record of such an impairment"** or who **"is regarded as having such an impairment."** In so many words, this refers to persons who are *treated* as if they have the impairment, even if they no longer do, or never did. These phrases were defined in the same regulations as follows:

Has a record of such an impairment means has a history of, or has been *misclassified* as having, a mental or physical impairment that substantially limits one or more major life activities." (emphasis added)

Is regarded as having an impairment means (A) has a physical or mental impairment that does *not* substantially limit major life activities but that is treated by a [funding] recipient as constituting such a limitation; (B) 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 (C) has none of the impairments defined in... this section *but is treated by* a [funding] recipient as having such an impairment." (emphasis added)

It is important to note that the second and third prongs of Section 504 (has a record of or is regarded as having an impairment) do not guarantee accommodations to the individual. These prongs simply afford the individual with protection from discrimination.

Eligibility and Evaluation

IDEA is an education law that offers supplemental funding for services to students with very specific educational disabilities. IDEA defines as eligible only those students who have specified types of educational disabilities and who, because of one or more of those conditions, need special education and related services. Section 504, however, protects all qualified students with disabilities, defined as those persons having a physical or mental impairment which substantially limits one or more major life activities. Section 504 covers all students who meet this definition, even if they do not fall with the IDEA categories and even if they do not need specially designed instruction.

An example of a student who may be protected under Section 504, but who may not be eligible under IDEA, is one who has juvenile arthritis (or any other crippling joint disease) but who does not require special education in order to receive FAPE. This student may be disabled because of a health impairment that substantially limits a major life activity (lack of physical strength). This student may have limited strength, and may not be able to carry a heavy backpack full of books home each night. In order to fully access the regular education program, the district may determine that it is necessary to provide an extra set of books for the student to keep at home during the school year. This would constitute a 504 accommodation.

If a school district has reason to believe a student may have a disability as defined under Section 504 and may require special accommodations in the general education setting, the district must evaluate the student. If the student is determined to be eligible under Section 504, the district must develop and implement a plan for the delivery of all services. For example, in the case of the student with juvenile arthritis, the evaluation might consist of medical documentation of the diagnosed disability and a statement of the impact of the disability on physical strength, with observations of functioning in the school setting.

Services

The determination of the services needed must be made in accordance with evaluation data by a group of persons knowledgeable about the student. The team should review the nature and presence of the disability, how it affects the student's access to the educational process, whether accommodations are needed to prevent discrimination, and they must make decisions about the provision of those accommodations. The decisions about 504 eligibility and services must be documented in the student's file and, if services are provided, eligibility and the plan for services should be reviewed periodically (as determined by the team).

For a student with juvenile arthritis who has difficulty writing, Section 504 services might be the provision of a typing course and the use of a typewriter/word processor to improve writing speed and legibility, or to provide a less painful means of writing. For a student with sickle cell anemia, perhaps a modified class schedule is needed to accommodate the student's stamina. Other examples of 504 accommodations might be administration and monitoring of medication, assistance in agency referrals, use of a student journal of assignments, increased parent communication, or an increase in number of excused absences for health reasons.

Parent Notice

It should be noted, under Section 504, that the parent or guardian must be provided with notice of actions affecting the identification, evaluation and placement of the student. While there is no requirement that the parent has the right to participate in making these decisions, most districts do invite the parent/guardian to meetings where these decisions are being made. Parents are entitled to an impartial due process hearing if they disagree with district decisions in these areas.

Summary

It is important to remember that some students who have physical or mental impairments which substantially limit their ability to participate in the educational program are entitled to rights under Section 504/ADA, even though they may not fall into IDEA categories and are not eligible for services under the law.

Section 504 is not an aspect of special education. Rather, it is a civil rights law and therefore is the responsibility of the comprehensive general education system. As such, superintendents and building administrators are responsible for its administration within districts. Funds from IDEA may not be used for the express purpose of meeting only the Section 504 requirements.

The Georgia Department of Education has provided this information to serve as a helpful resource. Each school system has a contact person who should be consulted for guidance on Section 504 issues. For further information, one may wish to contact the U.S. Department of Education, Office of Special Education Programs, or the Office for Civil Rights.