

SECTION 504



WHAT IS SECTION 504?

Section 504 of the Rehabilitation Act of 1973 (“Section 504”), is a civil rights statute which prohibits discrimination on the basis of a disability in a full range of state and local government services, programs, and activities (including public schools), that receive federal financial assistance from the U.S. Department of Education. (34 C.F.R. § 104.4.) Section 504 has dual requirements: (1) to provide FAPE, and (2) to ensure equal access and not engage in unlawful discrimination.

SECTION 504 FAPE REQUIREMENTS

FAPE: The provision of regular or special education and related aids and services that are designed to meet individual educational needs of disabled students as adequately as the needs of non-disabled students are met. (34 C.F.R. § 104.33(a).) FAPE is not limited to accommodations under Section 504.

LRE

- > Eligible students have a right to placement in the least restrictive environment (“LRE”).
- > Must be served in the same setting as non-disabled students “to the maximum extent appropriate.”

Documentation of FAPE Offer

- > Best practice includes use of a written document, often called a “504 Plan.”

Eligibility for FAPE: All students who actually have a physical or mental impairment that substantially limits one or more major life activities are eligible for a FAPE under Section 504.

Section 504 Child Find & Qualifying Age

- > Section 504 requires a district to annually “undertake to identify and locate every qualified handicapped person residing in [the district’s] jurisdiction who is not receiving a public education...” (34 C.F.R. 104.32.)
- > A student is qualified if the student is of an age at which: 1) students without disabilities are provided elementary and secondary educational services; or, 2) it is mandatory under State law to provide elementary and secondary educational services to students with disabilities.
- > A student is also qualified if he or she is a student with a disability to whom a State is required to provide a FAPE under the Individuals with Disabilities Education Act (“IDEA”).

Section 504 Evaluation

- > Following IDEA evaluation requirements ensures compliance with Section 504:
 - > Qualified evaluators selected by the school.
 - > Assessment must address all suspected areas of disability.
 - > Must obtain information from a variety of sources. A medical diagnosis is one source, but is never sufficient alone.
 - > May include aptitude and achievements tests, teacher recommendations, physical status, and adaptive behavior.
- > No automatic entitlement to evaluation, but if denying must notify parent/guardian of decision in writing and provide procedural safeguards.

Section 504 Timelines

- > Section 504 does not impose a specific timeline for evaluations or determining placements.
- > Office of Civil Rights (“OCR”) requires evaluation within a “reasonable amount of time” and prior to any change in placement.
- > IDEA timelines will meet OCR’s “reasonableness” requirement.

Section 504 Meeting

- > After evaluation, convene a meeting with team of “knowledgeable persons”:
 - > Parents, general education teacher(s), individuals who can interpret assessment.
 - > “Disability” should be broadly construed.
 - > No consideration of mitigating measures.

SECTION 504 EQUAL ACCESS / NON-DISCRIMINATION DUTY

“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.)

Protected by Section 504’s Non-Discrimination Duty: All students who:

- > Have a physical or mental impairment which substantially limits one or more major life activities,
- > Have a record of such impairment, or
- > Are regarded as having such an impairment.

Equal Access

Facilities

- > Section 504 requires that students with disabilities are not excluded from participation or denied benefits because of inaccessible or unusable facilities.
 - > This includes all or any portion of buildings, structures, equipment, roads, walks, parking lots, “play area,” or other real or personal property.
- > The standards required for complying with Section 504 depend on the date of construction or alteration.
- > Facilities constructed or altered prior to June 3, 1977 are considered existing facilities under Section 504.
- > Any program or activity operating in the facility must be readily accessible to individuals with disabilities when viewed in its entirety.

Extracurricular Services

- > Students are entitled to equal access to non-academic and extracurricular services and activities as afforded to students without disabilities and equal opportunity for participation.
 - > This includes such services and activities as counseling, transportation, health services, recreational activities, special interest groups or sponsored clubs, and activities related to employment of students.
 - > This also applies to interscholastic, club, or intramural athletics.
- > A district should make reasonable modifications as necessary to ensure an equal opportunity to participate, unless the student is unable, with accommodations, to participate in the extracurricular activity. (*Snohomish (WA) School District No. 201, 23 IDELR 97 (OCR 1995).*)

Discrimination & Harassment

- > Section 504 prohibits discrimination, including harassment, on the basis of an individual's disability.
- > As defined by OCR, "Disability harassment under Section 504 is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program."
- > Harassment can be verbal, non-verbal, or physical.
- > OCR has found violations where: (1) the conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the education program; (2) the district has notice that the harassment may have occurred; and (3) the district fails to take appropriate responsive action. (See, e.g. *Montgomery County (AL) Sch. Dist.*, 48 IDELR 108 (OCR 2007).

DISCLAIMER: As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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