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Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973

Introduction

Section 504 of the *Rehabilitation Act of 1973* protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance, including federal funds. Section 504 provides that: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his 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 . . ."[1]

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive funds from ED. Recipients of these funds include public school districts, institutions of higher education, and other state and local education agencies. ED has published a regulation implementing Section 504 (34 C.F.R. Part 104) and maintains an Office for Civil Rights (OCR), with 12 enforcement offices and a headquarters office in Washington, D.C., to enforce Section 504 and other civil rights laws that pertain to recipients of funds.[2]

The Section 504 regulation requires a school district to provide a "free appropriate public education" (FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.

This pamphlet answers the following questions about FAPE according to Section 504:

- Who is entitled to a free appropriate public education?
- How is an appropriate education defined?
- How is a free education defined?

Who Is Entitled to FAPE?

All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education. The ED Section 504 regulation defines a person with a disability as "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." [3]

For elementary and secondary education programs, a qualified person with a disability is a person with a disability who is:

- of an age during which it is mandatory under state law to provide such services to persons with disabilities;
- of an age during which persons without disabilities are provided such services; or
- entitled to receive a free appropriate public education under the *Individuals with Disabilities Education Act* (*IDEA*). (*IDEA* is discussed later in the pamphlet.)

In general, all school-age children who are individuals with disabilities as defined by Section 504 and *IDEA* are entitled to FAPE.

How Is an Appropriate Education Defined?

An appropriate education may comprise education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all or portions of the school day. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by related services such as speech therapy, occupational and physical therapy, psychological counseling, and medical diagnostic services necessary to the child's education.

An appropriate education will include:

- education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met;
- the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;
- evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and
- establishment of due process procedures that enable parents and guardians to:
    - receive required notices;
    - review their child's records; and
    - challenge identification, evaluation and placement decisions.

Due process procedures must also provide for an impartial hearing with the opportunity for participation by parents and representation by counsel, and a review procedure.

Education Services Must Meet Individual Needs

To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of individuals with disabilities.

One way to ensure that programs meet individual needs is through the development of an individualized education program (IEP) for each student with a disability. IEPs are required for students participating in the special education programs of recipients of funding under the *IDEA*.

The quality of education services provided to students with disabilities must equal the quality of services provided to nondisabled students. Teachers of students with disabilities must be trained in the instruction of individuals with disabilities. Facilities must be comparable, and appropriate materials and equipment must be available.

Students with disabilities may not be excluded from participating in nonacademic services and extracurricular activities on the basis of disability. Persons with disabilities must be provided an opportunity to participate in nonacademic services that is equal to that provided to persons without disabilities. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, and referrals to agencies that provide assistance to persons with disabilities and employment of students.

Students With Disabilities Must Be Educated With Nondisabled Students

Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the education needs of the students with disabilities. A recipient of ED funds must place a person with a disability in the regular education environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education, to the maximum extent appropriate to their individual needs.

As necessary, specific related aids and services must be provided for students with disabilities to ensure an appropriate education setting. Supplementary aids may include interpreters for students who are deaf, readers for students who are blind, and door-to-door transportation for students with mobility impairments.

A recipient of ED funds that places an individual with disabilities in another school is responsible for taking into account the proximity of the other school to the student's home. If a recipient operates a facility for persons with disabilities, the facility and associated activities must be comparable to other facilities, services, and activities of the recipient.

Evaluation and Placement Decisions Must Be Made in Accord With Appropriate Procedures

Failure to provide persons with disabilities with an appropriate education frequently occurs as a result of misclassification and inappropriate placement. It is illegal to base individual placement decisions on presumptions and stereotypes regarding persons with disabilities or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every student who is hearing impaired, regardless of the severity of the child's disability, must be placed in a state school for the deaf.

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

A school district must conduct or arrange for an individual evaluation at no cost to the parents before any action is taken with respect to the initial placement of a child who has a disability, or before any significant change in that placement.

Recipients of ED funds must establish standards and procedures for initial and continuing evaluations and placement decisions regarding persons who, because of a disability, need or are believed to need special education or related services.

These procedures must ensure that tests and other evaluation materials:

- have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;
- are tailored to assess specific areas of education need and are not designed merely to provide a single general intelligence quotient; and
- are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Recipients must draw upon a variety of sources in the evaluation and placement process so that the possibility of error is minimized. All significant factors related to the learning process must be considered.

These sources and factors include, for example, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. "Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group." (See Appendix A to 34 CFR Part 104, Evaluation and Placement.)

Information from all sources must be documented and considered by a group of knowledgeable persons, and procedures must ensure that the student is placed with nondisabled students to the greatest extent appropriate.

Periodic reevaluation is required. This may be conducted in accordance with the *IDEA* regulation, which requires reevaluation at three-year intervals (unless the parent and school district agree reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation.

Recipients Must Have Due Process Procedures for the Review of Identification, Evaluation, and Placement Decisions

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

Parents must be told about these procedures. In addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records. The due process procedures must allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions.

If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for their participation and for representation by counsel. A review procedure also must be available to parents or guardians who disagree with the hearing decision.

How Is A Free Education Defined?

Recipients operating federally funded programs must provide education and related services free of charge to students with disabilities and their parents or guardians. Provision of a free education is the provision of education and related services without cost to the person with a disability or his or her parents or guardians, except for fees equally imposed on nondisabled persons or their parents or guardians.

If a recipient is unable to provide a free appropriate public education itself, the recipient may place a person with a disability in, or refer such person to, a program other than the one it operates.

However, the recipient remains responsible for ensuring that the education offered is an appropriate education, as defined in the law, and for coverage of financial obligations associated with the placement.

The cost of the program may include tuition and other related services, such as room and board, psychological and medical services necessary for diagnostic and evaluative purposes, and adequate transportation. Funds available from any public or private source, including insurers,[4] may be used by the recipient to meet the requirements of FAPE.

If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school. If a recipient school district places a student with a disability in a program that requires the student to be away from home, the recipient is responsible for the cost of room and board and nonmedical care.

To meet the requirements of FAPE, a recipient may place a student with a disability in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if the student with a disability were placed in the recipient's program.

FAPE Provisions in the Individuals with Disabilities Education Act (IDEA)

Part B of *IDEA* requires participating states[5] to ensure that a free appropriate public education (FAPE) is made available to eligible children with disabilities in mandatory age ranges residing in the state. To be eligible, a child must be evaluated as having one or more of the disabilities listed in *IDEA* and determined to be in need of special education and related services. Evaluations must be conducted according to prescribed procedures. The disabilities specified in *IDEA* include: intellectual disabilities, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, and multiple disabilities. Additionally, states and local education agencies (LEAs) may adopt the term "developmental delay" for children aged 3 through 9 (or a subset of that age range) who are experiencing a developmental delay as defined by the state and need special education and related services.

The requirements for FAPE under *IDEA* are more detailed than those under Section 504. In specific instances detailed in the Section 504 regulation (for example, with respect to reevaluation procedures and the provision of an appropriate education), meeting the requirements of *IDEA* is one means of meeting the requirements of the Section 504 regulation.

IDEA requirements apply to states receiving financial assistance under *IDEA*. States must ensure that their political subdivisions that are responsible for providing or paying for the education of children with disabilities meet *IDEA* requirements. All states receive *IDEA* funds. Section 504 applies to any program or activity receiving ED financial assistance.

IDEA is administered by ED's Office of Special Education Programs (OSEP), a component of ED's Office of Special Education and Rehabilitative Services (OSERS). For more information about *IDEA*, contact OSERS at 400 Maryland Ave. S.W., Washington, DC 20202-7100. Additional information is also available at: http://www.ed.gov/about/offices/list/osers/osep/.

How to Obtain Further Assistance And Information

If you would like more information about Section 504 and the other laws enforced by the Office for Civil Rights, about how to file a complaint, or, if you are a school or school district, about how to obtain technical assistance, contact the Enforcement Office that serves your state or jurisdiction. Contact information for these offices is at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm. Information about discrimination based on disability is on OCR's Web site at http://www.ed.gov/policy/rights/guid/ocr/disability.html. For further information, please contact our Customer Service Team toll-free at 1-800-421-3481.

Endnotes

[1]Section 504 of the *Rehabilitation Act of 1973*, as amended, 29 U.S.C. 794.

[2]Title II of the *Americans with Disabilities* Act of 1990, (ADA), 42 U.S.C. § 12131 et seq., prohibits state and local governments from discriminating on the basis of disability. ED enforces Title II in public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. The requirements regarding the provisions of a free appropriate public education (FAPE), specifically described in the Section 504 regulations, are incorporated in the general non-discrimination provisions of the Title II regulation. Because Title II does not change the requirements of FAPE, this pamphlet refers only to Section 504.

[3]The Section 504 regulation uses the term "handicap." However, Congress has amended the *Rehabilitation Act of 1973* and has replaced the term "handicap" with the term "disability." The terms "handicap" and "disability" have the same meaning. This pamphlet uses only the term "disability."

The *Americans with Disabilities* Act *Amendments Act (Amendments Act)*, P.L. 110-325, amended the ADA and Section 7 of the *Rehabilitation* Act of 1973, which contains the disability definition for Section 504. The *Amendments Act* became effective on January 1, 2009. The *Amendments Act* affected the meaning of the term "disability" in the ADA and Section 504, most notably by requiring that "disability" under these statutes be interpreted broadly. More information about the *Amendments Act* is available from OCR's website at http://www.ed.gov/policy/rights/guid/ocr/disability.html and http:// www.ed.gov/ocr/504faq.html.

[4]A recipient responsible for providing FAPE may not require parents to use private insurance proceeds to pay for required services where the parents would incur financial loss.

[5] "State" in this publication refers to each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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