

SECTION 504 OF THE REHABILITATION ACT OF 1973

What Is Section 504?

Section 504 is an amendment to the Rehabilitation Act of 1973. It is essentially a civil rights statute, unlike the Individuals with Disabilities Education Act (IDEA), which is an education statute based in civil rights law. Section 504 requires that any agency that receives federal funds must provide qualified persons with disabilities **equal access to the services, programs and activities offered by the agency**. Section 504 specifically prohibits discrimination on the basis of disability or “handicapping condition,” by recipients of federal funds. Because all public schools receive federal funds from the Federal Department of Education through the state department of education, Section 504 applies to public schools. Compliance with this statute is the responsibility of the general administration in the school district rather than the special education administration. Responsibility for implementation of Section 504 in a given school building rests with the building principal or the principal’s designee.

Defining a Free Appropriate Public Education Under Section 504

Like the IDEA, Section 504 requires public schools to provide every qualified student with a disability a **free appropriate public education**. An appropriate education may require the provision of general or special education and related services to meet the individual needs of the child, regardless of the nature or severity of the disability, *as adequately as the needs of children without disabilities are met*. The statute focuses on assuring access to educational services and the learning process for students with disabilities that is equal to that afforded children who do not have disabilities.

Children eligible for protection under Section 504 must meet three criteria. They must have: (1) A **mental or physical impairment** (or history of an impairment or be treated as if having an impairment), (2) which **substantially limits**, (3) one or more **major life functions**. Examples of major life functions are: seeing, hearing, speaking, breathing, walking, working, learning, performing manual tasks and caring for one’s self. A person can also be protected if he or she has a history of a qualified impairment or is regarded as having an impairment.

Section 504 applies to academic, nonacademic and extracurricular activities available to students who do not have disabilities. Such activities include: meals, recess periods, field trips, transportation, social activities, school clubs, school-sponsored events, health services, and counseling services. Thus if a student with a physical disability was unable to participate in a field trip due to inaccessibility of the location, the school district would be required to make reasonable accommodations so that the student would have access to the same opportunities as other students participating in the field trip. The school district could meet this student’s needs in a variety of ways: by changing the

location to an accessible facility, by providing special transportation to overcome the inaccessible portion of the facility or by obtaining permission to use a freight elevator if one is available.

One of the challenges a school district faces in serving students under Section 504 is that, unlike IDEA, which provides specific funding mechanisms for serving eligible students, Section 504 carries no particular funding other than the general flow-through funding provided by the federal government for general educational services. There are no separate funds earmarked for the supplementary aids and services to meet the needs of students with disabilities as defined by Section 504, unless the school district specifies an item in its local school district budget for the provision of services under Section 504.

The Least Restrictive Environment Requirement

Section 504 requires that a student with a disability be educated with students who do not have disabilities to the maximum extent appropriate to the student's needs. A student with a disability should be placed in the general education classroom unless it has been demonstrated that this environment, even with the use of supplementary aids and services, cannot meet the student's educational needs. When a school district recommends placement of a student with a disability outside the general education classroom, the district must consider how close the proposed placement is to the student's home.

Section 504 Accommodation Plans

Students with disabilities under Section 504 who require special education services, supplementary aids, related services, or accommodations in order to receive an appropriate education should have a written plan for such services or accommodations. Some school districts have developed a document called a "Section 504 Accommodation Plan." This document identifies the student's educational needs and the manner in which the student's needs are to be met. An Individual Education Program (IEP) can be used as a Section 504 Plan. The Section 504 Accommodation Plan should be reviewed at least annually, or more frequently whenever there is a change in the student's physical, medical or psychological needs.

Under Section 504 school districts are required to make **reasonable accommodations** to ensure that qualified students receive the same opportunities to learn and to participate in the programs, activities or services offered to students who do not have disabilities. The term "reasonable" as used in this portion of the statute refers to what is reasonable for the individual student unless the school district can demonstrate that the accommodation would impose an undue hardship on the operation of the program or would substantially alter the nature of the activity.

The written Section 504 Plan should indicate those accommodations that a particular student requires in order to have equal access to the learning process and to other programs, activities or services. Attached in checklist form are some of the more common types of accommodations needed by qualified students. A student may not

require all accommodations to be made in all classes. It is sometimes helpful to list the needed accommodations by academic subject or activity.

It is also important to identify the qualified student's primary learning style and to "match" the student with teachers who teach to that style. For example, if the student is a kinesthetic learner (learns best by actively doing something) who has writing difficulties, it would not be to the student's benefit to be placed in a class with a teacher whose primary mode of teaching is lecture with students required to take lots of notes. (Although a student could be accommodated in this situation by being given a hard copy of the teacher's notes or by having another student act as the note taker and by photocopying his or her lecture notes.) The need for a student to be scheduled into classes with teachers who use a specific teaching format can be addressed in the written Section 504 plan.

Procedural Safeguards Under Section 504

Section 504 provides for a number of procedural safeguards or "parents' rights" similar to those under IDEA. These rights include the right to: prior written notice of meetings; prior written notice of plans to change a child's placement; appeal the identification, placement or evaluation of the student through a dispute resolution process, including an impartial hearing; be represented by an attorney at a hearing; and examine relevant records.

Every school district is required to have specific procedures, preferably written procedures, for implementing Section 504. In addition, the law requires that every school district designate a specific person, called the Section 504 Coordinator, to be responsible for implementation of the law in the district and respond to Section 504 complaints. It is important to keep in mind that Section 504 compliance is the responsibility of the **general education** administration, not the special education administration. However, many general education teachers and administrators are not as familiar with the requirements of the law as they should be.

Monitoring Compliance with Section 504

The Office of Civil Rights of the Federal Department of Education (OCR) is the federal agency charged with enforcing the rights of students with disabilities and monitoring compliance by school districts through an administrative process. Parents may file written complaints with either the school district's Section 504 Coordinator or with the Office of Civil Rights when they believe the school district has discriminated against their child on the basis of the child's disability or when the school district has denied the child a free appropriate public education in the least restrictive environment. The parent and child are collectively called the **complainant** in a written complaint. The school district against whom the complaint is brought is called the **respondent**. If the building principal is unable to resolve a Section 504 issue informally, the child's parents may contact the Section 504 coordinator for the school district or the area

superintendent to whom the principal reports.

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The Office of Civil Rights serving Colorado can be contacted as follows:

Office of Civil Rights, Region VIII
U.S. Department of Education
1244 Speer Boulevard, Suite 310
Denver, Colorado 80204-3582
(303) 844-5695

A complainant may file a civil action in court to resolve a dispute without having first filed an administrative complaint. The Office of Civil Rights has 180 days from the date the complaint is filed to investigate and resolve the complaint.

A Word About Accessibility

Section 504 guarantees access to educational services for students with disabilities, but it also guarantees physical access to the buildings and other locations where academic, nonacademic and extracurricular activities take place. The law states that public school buildings built prior to June 3, 1977, are considered “existing” buildings and do not have to be made accessible to students with disabilities. If a non-accessible building undergoes renovation, however, the renovation plans must include construction necessary to make the building physically accessible.