

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504).

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. Section 504 requires that school districts provide a free and appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

To be protected under Section 504, a student must be determined to: 1) have a physical or mental impairment that substantially limits one or more major life activities; 2) have a record of such an impairment, or 3) be regarded as having such an impairment.

What process should a school district use to identify students eligible for services under Section 504?

- School districts may use the same process initially to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulation at 34 C.F.R. 104.35.

What services are available for students who qualify under Section 504?

- Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

Are there any impairments which automatically qualify a student for protection under Section 504?

- No. An impairment in and of itself does not qualify a student for protection under Section 504. The impairment must substantially limit one or more major life activities in order to qualify a student for protection under Section 504.

Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

- No. A physician's medical diagnosis may be considered among other sources in evaluating a student with a disability or believed to have a disability which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504? Is Reevaluation required?

- School districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing. Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulation, which requires re-evaluation at three-year intervals or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation.

A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

- The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or other major life activities and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

If a student qualifies for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

- No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements is to comply with IDEA.

Must a recipient school district obtain parental consent prior to initiating a Section 504 evaluation?

- Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, districts may use due process hearing procedures to override the parents' denial of consent for an initial evaluation.

What procedural safeguards are required under Section 504?

- Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?

- Office of Civil Rights, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. Section 504 prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance from the U.S. Department of Education. Section 504 is an anti-discrimination law and does not provide any type of funding.

- The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds.

What does noncompliance with Section 504 mean?

- A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

Who has ultimate authority to enforce Section 504?

- In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district.

What sanctions can OCR impose on a school district that is out of compliance?

- OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Accommodation: a term correctly used in the context of public accommodations and facilities; an individual with a disability may not be excluded, denied services, segregated or otherwise treated differently than other individuals by a public accommodation or commercial facility; (term is not to be confused with "reasonable accommodation," discussed below)

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aids, benefits, or services

Free and appropriate public education (FAPE): a term used in the elementary and secondary school context; refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments and auxiliary aids and services in the postsecondary school context>

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation