

WHAT IS SECTION 504?

Section 504 is the section of the Rehabilitation Act of 1973 that applies to persons with disabilities. Basically it is a civil rights act that protects the civil and constitutional rights of persons with disabilities. Section 504 prohibits organizations receiving federal funds from discriminating against otherwise qualified individuals solely on the basis of a disability. Section 504 is enforced by the U.S. Department of Education and The Office for Civil Rights (OCR).

HOW DOES SECTION 504 DEFINE “DISABILITY”?

An individual with a disability is any person who:

1. has a physical or mental impairment which substantially limits one or more of such persons major life activities,
2. has a record of such an impairment, or
3. is regarded as having such an impairment.

29 U.S.C. & 706(8)(B)

In addition to school-aged children who are eligible for special education services, persons with communicable diseases, temporary handicapping conditions, Attention Deficit Hyperactivity Disorder (ADHD), behavior disorders, chronic asthma & severe allergies, physical handicaps, and diabetes, may also be eligible.

WHAT IS A “MAJOR LIFE ACTIVITY”?

Major life activities include basic life functions such as walking, talking, seeing, hearing, speaking, eating, breathing, learning, working, caring for oneself, and performing manual tasks.

WHAT TYPES OF DISCRIMINATION DOES SECTION 504 PROHIBIT?

“No otherwise qualified individual with a disability may be . . . “
29 U.S.C. & 794

1. Denied the opportunity to participate in or benefit from a service that is afforded to nondisabled students.

Example: refusing to allow a student with a 504 Plan the opportunity to be on the honor roll, denying credit to a student whose absenteeism is related to the disability, refusing to dispense medication to a student with ADHD.

2. Provision of opportunity to participate in or to benefit from service which is not equal to that afforded to others.

Example: determining sports eligibility based upon a student’s grades without regard to the student’s disabling condition.

3. Provision of assistive aids, benefits or services, which are not as effective as those, provided to others. Equally effective means equivalent, not identical, and must afford an equal opportunity, not equal results.

Example: Placing a student with a hearing impairment in the front row instead of providing an interpreter.

4. Provision of different or separate benefits or services unless such action is necessary to be effective.

Example: separate classes, schools, or facilities for students with disabilities.

5. Aiding or perpetuating discrimination by providing assistance to an organization that discriminates.

Example: sponsoring a student organization that excludes persons with disabilities.

6. Denial of the opportunity to participate on a planning or advisory board because of an individual’s disabling condition.

7. Otherwise limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

8. Selecting a site or location, which effectively excludes persons with disabilities or subjects them to discrimination.

Example: locating students with disabilities in inferior facilities due to a lack of classroom space.

WHAT DOES REASONABLE ACCOMMODATION MEAN?

A recipient of federal funds (public schools) shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified student unless the recipient can demonstrate that the accommodations would impose an undue hardship on the operation of its program. Courts have required accommodations, which achieve “meaningful equal opportunity.” Accommodations need to take into account both the functional limitations of the individual and the alternative methods of performing task or activities, which would permit people of varying abilities to participate without jeopardizing outcomes. Some examples of reasonable accommodations are modified homework requirements, provision of taped books, changes in the way a test is given, or seating in the front row of the classroom.

1. Accommodations must be individualized.

2. The individual needs of the person with a disability should be met to the same extent as the need of person without disabling conditions.

3. Modifications can be made to regular programs or the provision of different programs may be necessary.

4. Accommodations should place the student with a disability at an equal starting level with the nondisabled student.

HOW DOES SECTION 504 DEFINE “APPROPRIATE EDUCATION”?

A free appropriate education is one provided by the public elementary or secondary school which includes regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the need of non handicapped persons are met and are based upon adherence to evaluation, placement and procedural safeguard requirements.

DOES SECTION 504 REQUIRE EVALUATIONS?

Section 504 Regulation, 34 CFR Section 104.35 (a) requires that a district evaluate “any person who, because of a disability, needs or is believed to need special education or related services”. An evaluation is also required prior to any significant change in placement. Prescreening methods, which affect a student’s eligibility for special education, may be considered “evaluations” and are *subject to proper notice requirements*.
EHLR DEC 353.237(1989)

Section 504 does not require that a district conduct a complete evaluation of a student simply because a parent requests it. However, refusal by the district to do so, constitutes an official action with respect to the student’s evaluation and placement, and the district must provide the parent with Procedural Safeguards.

DOES SECTION 504 REQUIRE AN INDIVIDUAL EDUCATION PLAN (IEP)?

A formal IEP is not required, as is the case with the Individuals With Disabilities Education Act (IDEA), however, placement decisions must be made by a group of persons knowledgeable about the child, about the meaning of the evaluation data, and about placement options. Section 504 requires a plan describing placement and services. Placement decisions must be based upon information drawn from a variety of sources and all information must be documented and considered.