

Introduction

What is Section 504 of the Rehabilitation Act of 1973?

Section 504 is a federal civil rights law that prohibits recipients of federal funding, including public school districts, from discriminating on the basis of an individual's disability. Section 504 requires school districts to make their programs and activities accessible to everyone. Section 504 applies to students, as well as employees and the parents of students who attend public schools.

Section 504 provides as follows:

No otherwise qualified individual with a disability in the United States shall... solely by reason of his or her 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.

Key Definitions under Section 504:

A person is covered under Section 504 if he or she:

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

"Physical or mental impairment" means:

- any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; *or*
- any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

"Major life activity" includes, but is not limited to:

- functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working; *and*
- the operation of a major body function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive system.

Substantial Limitation

The term **"substantially limits"** is not defined in the Section 504 statute or the regulations. Whether an impairment substantially limits one or more major life activities is to be determined on an individual basis. The Americans with Disabilities ("ADA"), which also uses the term,

provides some guidance, indicating that the term “substantially limits” should be construed broadly. Under the ADA:

“An impairment is a disability...if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability....”

Temporary Impairments

OCR has advised that a temporary impairment (i.e., one with an actual or expected duration of 6 months or less) does not constitute a disability unless its severity is such that it results in a substantial limitation for an extended period of time. (*Protecting Students with Disabilities, Frequently asked Questions about Section 504 and the Education for Children with Disabilities*, Office for Civil Rights, March, 17, 2011). OCR determined that students are not entitled to FAPE or reasonable accommodations or modifications to policies, practices, and procedures simply because they have a record of a disability or are regarded as having an impairment. OCR wrote “unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a record of or is regarded as disabled is insufficient in itself to trigger those 504 protections that require the provision of a Free Appropriate Public Education.”

UNDERSTANDING SECTION 504

Free Appropriate Public Education (FAPE)

A school district has the responsibility to provide a free appropriate public education to students with disabilities under Section 504 regardless of the nature and severity of the student's disability. Provision of a free and appropriate public education may include the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of their nondisabled peers are met and are based upon adherence to procedural protections that include the following:

- **Evaluation and placement:** Pre-placement evaluations are required prior to taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement;
- **Evaluation procedures:** These procedures must ensure that tests and other evaluation materials: 1) 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; 2) are tailored to assess specific areas of education need and are not designed merely to provide a single general intelligence quotient; and 3) 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).
- **Re-evaluation:** Periodic re-evaluation required. Although Section 504 does not specify timing for re-evaluations, school districts that re-evaluate students in accordance with the timelines set in the IDEA are provided with a "safe harbor" for compliance with the re-evaluation requirement. In particular, re-evaluations should be conducted at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).
- **Educational setting:** Education provided for the student with a disability with typical peers to the maximum extent appropriate to meet the needs of the student with a disability. The student shall be placed in a regular education environment unless it is demonstrated that education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily;
- **Nonacademic setting:** In arranging or providing for nonacademic or extracurricular activities, the students will participate to the maximum extent appropriate with nondisabled peers.