

What School Officials Need to Know About Section 504



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Overview

- **What is Section 504?**
 - An Anti-discrimination statute;
 - All entities that receive federal funding are subject to its requirements;
 - Intended to remove barriers to allow a disabled student equal opportunity;
 - Violations may be raised in an administrative hearing, a federal lawsuit, or in a complaint to the U.S. Dept. of Education's Office for Civil Rights.



Eligibility Criteria

- **Who is eligible under Section 504?**
 - Any Student who possesses:
 - A Physical or mental impairment that **substantially limits one or more major life activities**;
 - Has a record of such impairment;
 - Is regarded as having such an impairment.



Eligibility Criteria

- What is a Physical or mental impairment?
 - Any **physiological** disorder or condition;
 - Any **mental or psychological** disorder;
 - Specific **learning disabilities**;
 - A **temporary disability**, such as a broken leg, may constitute a physical or mental impairment under § 504. *See Ventura Unified School District*, 17 EHLR 854 (OCR 1991);
 - Not an “impairment” under § 504: cultural, environmental, economic disadvantage, sexual orientation, limited English proficiency. *See Appendix A to the §504 Regulations*, p. 419.



Eligibility Criteria

- What is a Substantial Limitation?
 - Any limitation that **affects a person's ability to perform an activity in relation to the average person in the general population.** *See 29 C.F.R. §1630(j)(1)(ii).*
 - Factors to consider when determining whether a person is "substantially limited" by an impairment:
 - The nature and severity of the impairment;
 - The duration or expected duration of the impairment;
 - The permanent or long-term impact resulting from an impairment. *See 29 C.F.R. §1630(j)(1)(ii).*



Eligibility Criteria

- What is a Major life activity?
 - Those basic activities that the average person in the general population can perform with little or no difficulty. See 34 C.F.R. §104.3.
- In Education:
 - The ability of a student to **learn and interact with others** may be considered a "major life activity." See *T.J.W. by Butler v. Dothan City Bd. Of Ed.*, 26 IDELR 999 (D.C.AI. 1997).
- A student may still have a disability under 504 even if s/he is doing well academically in school.



Referral

- **Who can refer a student to the Section 504 Committee?**
 - Anyone!!
 - A parent may refer to the 504 team;
 - The District has an affirmative responsibility to refer students who are suspected of having “academic, social, or behavioral problems that substantially affect the student’s overall performance at school.” *See Karnes City ISD, 31 IDELR 64 (1999).*



Evaluation

- **What evaluations do I need to perform for a 504 Student?**
 - The school district needs to gather information and data from a “variety of sources” so that the 504 Committee can make an “informed assessment” of the student. *See 34 C.F.R. sec. 104.35(c)(1).*
 - Evaluations must be performed by qualified personnel.
 - Schools are required to “**periodically**” re-evaluate student.



Independent Educational Evaluations

- **Do 504 students have a right to an IEE?**
 - NO!!!!!!!!!!
 - There is no provision in Section 504 that allows the Parent to obtain an independent evaluation at public expense when he/she disagrees with a school-based evaluation



Consent

- **When do I need a consent under Section 504?**
 - There is no specific criteria under Section 504 regarding parent consent.
 - OCR has determined that a school should obtain parental consent for the **initial** implementation of a Section 504 plan. See *Letter to Durham*, 27 IDELR 380 (1997).



504 Team Requirements

- **Who needs to attend a 504 meeting?**
 - No express statutory requirements for composition.
 - Placement decision must be made by group of persons **knowledgeable** about the student. *See 34 C.F.R. § 104.35(c)(3).*
 - 504 Team should meet “periodically” and before any change to 504 Plan.



Recommendations/Placement

- **What services/instruction can I put on a 504 plan?**
 - **General education placement** with services, accommodations, modifications;
 - Does not include self-contained settings;
 - The principle of Least Restrictive Environment applies. Schools must educate students with disability with non-disabled children, “to the maximum extent appropriate.” See 34 C.F.R. §104.34(a)(1).



Nonpublic Students

- **Are nonpublic students entitled to a 504 plan?**
 - No!!!!
 - A school district has no duty to provide educational service to students not enrolled in the public school program based on the personal choice of the parent or guardian.
Letter to Veir, 20 IDELR 864 (1993).



Student Discipline

- **Does a 504 student have a right to a manifestation determination?**
 - Yes!
 - Whenever a 504 student is being disciplined for a long-term suspension, the school must conduct a manifestation determination before imposing formal discipline. *See Letter to Sacramento City Unified Sch. Dist., 44 IDELR 101 (2005).*



Policies/Procedural Safeguards

- **Should a school maintain a Safeguards Notice for 504 students?**
 - Not required, but recommended. Every school should maintain, at a minimum, a Section 504 Policy.
 - Unlike the IDEA, a school does not need to have a formal Procedural Safeguards Notice for Parents.



Hearings

- **What is involved in a Section 504 hearing?**
 - Filing of Complaint
 - School Appointment of a Hearing Officer
 - IDEA standards do not govern the appointment of a hearing officer.
 - No requirement to implement IDEA procedures as Section 504 procedures when schools do not have published Section 504 procedures
 - Burden of Proof is on Parent
 - Federal Court Lawsuits

Questions?



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