

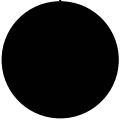
Selected Excerpts Version
July 2000



Section 504

STUDENT ISSUES
AND
PUBLIC SCHOOLS

SECTION 504 OF THE REHABILITATION ACT OF 1973
(29 U.S.C. §706(8), 794, 794A, 794B)



TEXAS EDUCATION AGENCY
AUSTIN, TEXAS
APRIL 1992

Basic Questions and Answers Regarding Student Issues

1. How does Section 504 define who is covered?

A. Who is a “qualified” individual?

For school districts, any child eligible for a district’s public education program is qualified. 34 CFR §104.3(k), §104.38 Parents who have a handicapping condition may also be protected by Section 504. For example, parents who are deaf may be entitled to an interpreter if they need it to have an equal opportunity to participate in school initiated activities regarding their child.

B. Who is considered to be “handicapped”?

There are three ways that a person may qualify under the regulations. A person is considered handicapped under Section 504 if s/he meets one or more of the following definitions:

- has as a physical or mental impairment which substantially limits one or more major life activities (e.g., any student receiving services under the Individuals With Disabilities Education Act (IDEA), students with drug or alcohol addictions, students with diabetes). The term does not cover children disadvantaged by cultural, environmental, or economic factors. Analysis of 34 CFR §104.3
- has a record or history of such and impairment (e.g., a student with learning disabilities who is no longer eligible to receive special education under IDEA, a student who had cancer, a student in recovery). The term includes children who have been misclassified (e.g., a non-English speaking student who was mistakenly classified as having mental retardation).
- is regarded as having such an impairment. A person can be found eligible under this section if s/he:
- has a physical or mental impairment that does not substantially limit a major life activity but is treated by the district as having such a limitations (e.g., a student who walks with a limp);
- has no physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such impairment (e.g., a student who is obese); or
- has no physical or mental impairment but is treated by the district as having such an impairment (e.g., a student who tests positive with the HIV virus but has no physical effects from it).

C. What is a “major life activity”?

Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. This list is not exhaustive. The handicapping condition must substantially limit one major life activity for the student to be eligible. 34 CFR §104.3(j) This activity need not be related to learning to come under the protection of Section 504.

D. What is a “program or activity”?

The term includes all programs or activities of school districts receiving federal funds regardless of whether the specific program or activity involved receives federal funds. For example, if a district subsidizes or provides an after-school care program, the district must ensure that a student with disabilities has an equal opportunity to participate in the program, even though the program itself does not receive any federal funds. 34 CFR §104.3(f); Civil Rights Restoration Act of 1988 (PL 100-259)

Basic Questions and Answers Regarding Student Issues

2. What is the difference between Section 504 and the Individuals With Disabilities Education Act (IDEA) concerning the qualifying conditions?

IDEA list specific types of disabling conditions which qualify a child to receive special education (as defined by IDEA). In addition, to be eligible under IDEA, the disabling condition must result in a **need** for special education.

Section 504 is broader than IDEA—there is no categorical listing of disabling conditions. **However, if a child is IDEA-eligible, s/he will also be protected under Section 504.** The regulations are also clear that certain conditions which would not qualify a child under IDEA, such as drug or alcohol addiction and heart disease, may be handicapping conditions under Section 504. Note that Section 504 makes a distinction between current use of drugs or alcohol and addiction to those substances. Current use is not a handicap. While Section 504 requires that the condition “substantially limit a major life activity,” a student’s educational performance need not necessarily be adversely affected to be protected by Section 504. The following are examples of potentially handicapping conditions under Section 504 which may or may not be covered under IDEA:

- dyslexia;
- communicable diseases such as AIDS, AIDS related complex (ARC) or asymptomatic carriers of the AIDS virus (HIV), tuberculosis;
- temporary handicapping conditions such as injuries, short-term illnesses;
- behavior disorders;
- chronic asthma and severe allergies;
- physical handicaps such as spina bifida, hemophilia, and conditions requiring children to use crutches; and
- other chronic and/or life-threatening diseases such as diabetes or cancer.

NOTE: In some cases the disability may be severe enough for the student to qualify under IDEA, e.g., dyslexia, and attention deficit hyperactivity disorder (ADHD).

3. What are the procedural requirements of Section 504?

To be in compliance with Section 504, school districts must take the following steps.

- A. Written Assurances:** provide written assurance of nondiscrimination whenever they receive federal money (e.g., on the LEA application). 34 CFR 104.5(a)
- B. Section 504 Coordination:** designate one or more employees to coordinate compliance with Section 504 if they have more than 15 employees. 34 CFR 104.7(a)
- C. Grievance Procedures:** provide grievance procedures to resolve complaints of discrimination if they more than 15 employees. 34 CFR §104.7(b)

Note: Students, parents, and employees are entitled to file grievances. A procedure providing for an informal appeal to district administrators similar to that afforded to parents under the Family Education Rights and Privacy Act for resolving disputes about student records is sufficient. However, the grievance process may not be used to override decisions about a child’s program made by the group of knowledgeable persons. (See question number 4).

- D. Notice:** provide notice to students, parents, employees and professional organizations of nondiscrimination in admission or access to, or treatment or employment in, their programs or activities (if more than 15 employees). The notice, which specifies the name(s) of the 504 coordinator(s) must be included in district’s general student/parent handbook. 34 CFR §104.8

Excerpt from Section 504: Student Issues and Public Schools, April 1992

Basic Questions and Answers Regarding Student Issues

- E. Childfind:** annually identify and locate all Section 504 qualified children in their geographic area who are not receiving a public education. 34 CFR §104.32(a)
- F. Annual Notice:** annually notify students with disabilities and their parents or guardians of the district's responsibilities under Section 504. 34 CFR §104.32(b)
- G. Procedural Safeguards:** provide parents or guardians with procedural safeguards which include:
 - notice of their rights, including the right to a hearing concerning the identification, evaluation, or educational placement of their child. 34 CFR §104.36
 - an opportunity to review relevant records.
 - a hearing conducted by an impartial person (not necessarily an attorney) who is not an employee of the district and who has no other conflict of interest. A review procedure is required. Appeal of a hearing officer decision to state or federal court satisfies this provision. 34 CFR §104.36

4. What are the specific obligations of school districts to comply with Section 504?

Districts must provide a free appropriate education (regular or special education and related aids and services) to school-age children within the district's jurisdiction who qualify under Section 504. Instruction must be individually designed to meet the student's needs as adequately as the needs of nonhandicapped students. Before the child can be placed and receive special services, the parents must be notified and the child must be evaluated using validated tests and trained personnel. While parental notice is required before a child is tested and/or placed, their consent is not required under Section 504. Only if the child is suspected of having a handicapping condition under IDEA is parental consent necessary. Placement decisions must be made by a group of persons knowledgeable about the child, the evaluation dates, and placement options, and the child must be placed in the least restrictive environment appropriate. Periodic reevaluations must be conducted, including prior to any significant change in placement. (See question number 7.) 34 CFR §104.35

5. What are the school district's obligations to evaluate a student suspected of having a 504 handicap?

As stated in question 4, if a student needs or is believed to need special instruction (special education or modifications of regular education) or related services, the district must evaluate the student before initial placement and before any "significant change in placement." A student with disabilities who is protected by Section 504 but who has no educational need and can function in the regular learning environment does not have to be evaluated. However, the district must ensure that the student has access to the programs and is not subject to discrimination. 34 CFR §104.35(a)

- The district must establish policies and procedures for evaluating and placing students which assure that tests and other evaluation materials:
- have been validated and are administered by trained personnel;
- are tailored to assess educational need and are not based solely on IQ scores;
- reflect aptitude or achievement or other elements the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these particular deficits).

34 CFR §104.35(b)

Note: There is no right to an independent evaluation at public expense under Section 504.

Basic Questions and Answers Regarding Student Issues

6. What placement procedures must be followed?

In interpreting evaluation data and making placement decisions, the district must:

- draw upon information from a variety of sources
- assure that all information is documented and considered
- ensure that the placement decision is made by a group of persons which includes those who are knowledgeable about the child, the meaning of the evaluation data, and placement options (inclusion of the parent is not required, but may be desirable).
- ensure that the student is educated with his/her nondisabled peer to the maximum extent appropriate.

34 CFR §104.35(c)

7. How frequently must a reevaluation be done?

Section 504 requires "periodic" reevaluations. Unlike IDEA, there is no specified time frame. However, school districts will be in compliance if they reevaluate the student every three years. Section 504 also requires a reevaluation before any significant change in placement. 34 CFR §104.35(d)

Example of significant changes in placement which require reevaluation:

- expulsion.
- serial suspensions which exceed 10 days in a school year. (Consideration is given to the frequency of suspensions, the length of each and their proximity to one another).
- individual suspensions which exceed six school days.
- transferring a student to home instruction.
- graduation from high school.
- significantly changing the composition of the student's class (e.g., moving the student from a regular classroom to a resource room).

8. Does Section 504 require placement in the least restrictive environment?

Yes. Like IDEA, to the maximum extent appropriate, districts must educate students with disabilities with nondisabled peers. To remove a child from the regular educational environment, the district must demonstrate that education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §104.34

9. What are the district's obligations regarding nonacademic services?

Districts must provide equal opportunity in areas such as counseling, physical education and athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies, and employment. 34 CFR §104.37

10. May the district use IDEA money to serve children who qualify under Section 504 but not under IDEA?

No. However, the district may use IDEA money to evaluate the child if the school district believes that the child may be eligible for special education.

Excerpt from Section 504: Student Issues and Public Schools, April 1992

A Comparison Chart: IDEA and Section 504

	IDEA	Section 504
Purpose	To insure that all children with disabilities have available to them a free, appropriate public education.	To prohibit discrimination on the basis of disability in any program receiving federal funds.
Who is Protected	Students who are eligible under the 13 categories of qualifying conditions (34 CFR §300.7)	Much broader. A student is eligible if s/he meets the definition of "qualified handicapped person," i.e., has or has had a physical or mental impairment which substantially limits a major life activity, has a record of or is regarded as disabled by others. Parents are also protected.
Duty of Provide A Free Appropriate Education	Both require the provision of a free appropriate education, including individually designed instruction, to students who qualify.	
	Requires the district to provide an individualized education program. "Appropriate education" means a program designed to provide "educational benefit."	"Appropriate" means an education comparable to the education provide to students without disabilities.
Special Education vs. Regular Education	A student is eligible to receive special education services only if a multidisciplinary team determines that the student has one of the handicapping conditions and needs special education.	A student is eligible if s/he meets the definition of "qualified handicapped person"; i.e., has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others. The student is not required to need special education in order to be protected.
Funding	Yes	No
Accessibility	Not specifically mentioned although if modifications must be made to provide a free appropriate education to a student, IDEA requires it.	Detailed regulations regarding building and program accessibility.
General Notice	Both require child find activities.	
	Requires notification of parental rights.	Districts must include notice of nondiscrimination in its employee, parent and student handbook and, if the district has more than 15 employees, must specify the district's 504 coordinator(s).

Excerpt from Section 504: Student Issues and Public Schools, April 1992

A Comparison Chart: IDEA and Section 504

IDEA		Section 504
Notice and Consent	Both require specific notice to the parent or guardian about identification, evaluation and placement.	
	Requires written notice. Notice requirements are more comprehensive and specify what the notice must provide.	Requires notice. (A district would be wise to give notice in writing.)
	Written notice is required before any change in placement.	Requires notice before a "significant change in placement."
	Requires consent for initial evaluation and placement.	Consent not required, but if a handicapping condition under IDEA is suspected, those regulations must be followed.
Evaluations	The regulations are similar.	
	Requires consent before an initial evaluation is conducted.	Requires notice, not consent.
	Reevaluations must be conducted at least every 3 years.	Requires "periodic" reevaluations.
	No provisions	Require a reevaluation before a significant change in placement.
	Provides for independent evaluations.	No provisions.
Determination of Eligibility, Program and Placement	Done by admission, review and dismissal committee. Parent is a member of the committee.	Done by a group of persons knowledgeable about the child, the evaluation data, and placement options. While parental participation is not mentioned in the regulations, parental notice is required.
	Grievance Procedure IDEA does not require a grievance procedure or a compliance officer.	Districts with more than 15 employees must designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure (an informal hearing before a district staff member) for parents, students, and employees.

Excerpt from Section 504: Student Issues and Public Schools, April 1992

A Comparison Chart: IDEA and Section 504

IDEA

Section 504

Due Process	Both require districts to provide impartial hearing for parents or guardians who disagree with the identification, evaluation, or placement of a student with disabilities. Hearing conducted by a state hearing officer (who is an attorney). Decisions may be appealed to court.	Hearings conducted at the local level by an impartial person not connected with the school district. Person need not be an attorney. Decisions may be appealed to court.
Enforcement	Compliance is monitored by the Texas Education Agency. TEA also receives and resolves complaints regarding IDEA. Office for Civil Rights does not enforce.	Enforced by the Office for Civil Rights (Regional Office – Dallas, TX) by complaint investigation and monitoring activities.
Employment	No provisions.	Employment of persons with disabilities is regulated.

Practical Suggestions for Compliance

I. Appoint 504 Coordinator(s)

- Coordinator(s) must cover student issues, employment issues, and facilities (Section 104.7(a))
- One or more coordinators should be appointed to cover student issues. Local district conditions will determine who and how many to appoint. This position is a regular education function; however, local districts may choose to use special education personnel if appropriate “split funding” is used.

II. Responsibilities Regarding Student Issues

- Develop and publish annual notice and conduct childfind activities (Section 104.8(a), Section 104.32)
- Place notice in student handbooks (Section 104.8(b))
- Develop wording and procedures for giving specific notice to parents upon referral, evaluation, and placement (Section 104.36)
- Develop local policies and procedures on referrals, evaluations, placement, parent access to records, and due process hearing, including what documentation is needed (Section 104.33-Section 104.36)
- Coordinate referrals, evaluations, multidisciplinary committee, placements, and hearing (Section 104.35-Section 104.36)
- Plan and provide inservice education for staff
- Coordinate procedures with specific programs, e.g., special education, compensatory education, and dyslexia programs; if a handicapping condition is suspected, follow all procedures before placing a child in a program, such as a dyslexia program or a transitional kindergarten/first grade class.
- Assure that appropriate programs and placements in the least restrictive environment are available for eligible students. (Section 104.33, Section 104.34)

III. Referrals

- Receive from parent/guardian or school official; should also be considered if, as a result of a referral to special education, the child is found ineligible
- Provide notice to inform how to initiate a referral
- Provide notice to parents of due process rights and of identification, evaluation, and placement when a referral is made (Section 104.36)
- Determine evaluation process and content (Section 104.35(a))

IV. Evaluations

- Determine what evaluation information is needed and who will do testing and provide other information
- Assure that testing is done in accordance with Section 104.35
- Do periodic reevaluations as needed and before any significant change in placement (Section 104.35(d))

Practical Suggestions for Compliance

V. Placement

- Determine makeup of multidisciplinary committee to evaluate and place student if found eligible (Section 104.35(c))
- Assure that the evaluation of the data and placement are done by persons knowledgeable about the student, the data, and placement options (Section 104.35(c))
- Assure that decisions about placement are based upon the child's individual needs, and the least restrictive environment considerations (Section 104.33(b), Section 104.34(a & b))

VI. Hearings

- Develop proceedings for timely due process hearings. Hearings may be conducted informally.
- Have trained, impartial persons who are not connected with the school district available to serve as hearing officers (Section 104.36)
- Process request for hearings from parents/guardians regarding identification, evaluation, or placement
- Supervise hearing process to assure timely completion of hearings

VII. Grievance Procedures

- Develop procedures for timely processing complaints regarding 504 issues files with the district. (Section 104.7)
- Informal procedures similar to employment grievances may be used, with district personnel as grievance officers; however, the grievance process may not be used to override decisions about an individual child's program made by the group of knowledgeable persons.

VIII. Complaints

- Notify parents/guardians that they may file complaints alleging a violation of Section 504 at:

Texas OCR Enforcement Office

The Office for Civil Rights
Dallas Regional Office
1999 Bryan, Suite 2600
Dallas, Texas 75201

Telephone | (214) 880-2459
Fax | (214) 880-3082 | TDD (214) 880-2456
Email | OCR_Dallas@ed.gov