



General Educator

Section 504
Issues

SECTION 504

QUICKGUIDE: THE GENERAL EDUCATOR & SECTION 504 ISSUES

*"No otherwise
qualified individual
with a disability
in the United States,
as defined in
§ 706(8) of this title, shall,
solely by reason of her or
his handicap,
be excluded from participation in,
be denied the benefits of,
or be subjected
to discrimination
under any program or
activity receiving
federal financial assistance
or under any program
or activity conducted
by any executive agency or by
the United States Postal Service . . ."*

29 U.S.C. §794(a) (1973).



Provided by
California Teachers Association
Instruction & Professional Development

**QUICKGUIDE:
THE GENERAL EDUCATOR
& SECTION 504 ISSUES**

First edition - October 2004

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California Teachers Association DISCLAIMER

This publication is not intended to be an exhaustive resource on Section 504 and does not add to, or subtract from, any requirements in state or federal law, nor is it intended to describe all of the legal requirements that apply to children with disabilities. Information and materials cited herein are provided for illustrative purposes only and are not specifically endorsed or approved by the California Teachers Association.

TABLE OF CONTENTS

Introduction	-----	1
Answers to Frequently Asked Questions About Section 504	-----	2
District and Teacher Compliance	-----	5
Identification, Evaluation and the Accommodation Process	-----	7
The Association's Role	-----	11
Web Resources	-----	13
Print Publications	-----	16
Endnotes	-----	18



INTRODUCTION

The General Educator & Section 504 Issues is offered as a basic primer for chapter leaders and CTA staff. Often mistaken for a special education issue, Section 504 of the Rehabilitation Act of 1973 has an everyday impact on classroom teachers delivering general education.

Enacted in 1973, the Rehabilitation Act dealt mainly with providing job opportunities and training to disabled adults, though one paragraph specifically addressed public schools. This paragraph, known as "Section 504", focuses on non-discrimination. It prohibits denying participation in, or benefits of, public school programs to any child because of a child's disability.

Section 504 also requires the provision of a free appropriate public education (FAPE), including individually designed programs, for students who are eligible. "Appropriate" means an education comparable to the education provided to non-handicapped students.

In order to receive accommodation under Section 504, a student does not need to receive special education services.

Section 504 is not a program for which Congress created funding, but a requirement which premises the receipt of other federal funds on district compliance.

The single paragraph referred to as Section 504 of the Rehabilitation Act provides that:

"No otherwise qualified individual with a disability in the United States, as defined in § 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any executive agency or by the United States Postal Service ..."
29 U.S.C. § 794(a) (1973).

ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT SECTION 504

What is the purpose/intention of Section 504?

To prohibit discrimination on the basis of disability in any program receiving federal funds.

Who is eligible for protection under Section 504?

A student is eligible so long as s/he meets the definition of a qualified handicapped person: i.e., has or has had a physical or mental impairment¹ which substantially limits a major life activity,² has a record of, or is regarded as, handicapped by others.

¹ & ² See Endnotes for further information.

Which conditions are covered under Section 504?

The question of whether a particular condition is a disability within the meaning of Section 504 and is determined on a case-by-case basis.

Section 504 does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments.

The Office for Civil Rights (OCR), which enforces Section 504, does not endorse a single standard or formula that measures substantial limitation.

The following are common examples of students with conditions who may be protected under Section 504 and require an accommodation plan. (This is not an exhaustive list.)

- students with allergies, asthma, or respiratory problems
- students with communicable diseases (e.g., HIV, AIDS)
- students who are alcohol or drug addicted, but are not using illegal drugs
- students with disabilities who are progressing in school without special education services
- students with Tourette's syndrome, attention deficit hyperactive disorder (ADHD), chronic fatigue syndrome, cancer, birth defects, blood sugar disorders

What are the differences in the definition of eligibility for special education and for Section 504?

For special education, a child must be eligible under one of the thirteen disability categories and need special education before s/he is entitled to related services.

The definition for eligibility under Section 504 is very broad and could include any physical or mental impairment which substantially limits a major life activity. A student who is not eligible under IDEA for special education may still be eligible for protection under Section 504.

What are some differences between Section 504 and IDEA?

Section 504

General ed responsibility
A civil rights law
No funding
Accommodation plan

IDEA

Special ed responsibility
An education act
Federal and state funding
IEP

In order to be protected under Section 504, does the student have to receive special education services?

No. The student is not required to receive special education services in order to be protected under Section 504. A student is eligible under Section 504 so long as s/he meets the definition of a 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 handicapped by others.

Do children who are referred to special education, but do not qualify under the IDEA criteria, automatically become Section 504 students?

Under Section 504, a "person with disabilities" is defined as any person who has a physical or mental impairment that substantially limits a major life activity. Depending on the severity of the condition, children who do not meet the standards under Part B of the IDEA may or may not fit within the Section 504 definition. It is not automatic.

What should a school district do if a parent refuses to consent to a case study evaluation under the IDEA, but demands a Section 504 plan without further evaluation?

Section 504 requires informed parental consent for the initial evaluation. If a parent refuses consent for an initial evaluation and the school district suspects a student has a disability, both the IDEA and Section 504 provide that school districts may use due process hearing³ procedures to make a determination.

³ See Endnotes for further information.

DISTRICT AND TEACHER COMPLIANCE

What does Section 504 require of school districts?

Section 504 requires school districts to "establish standards and procedures" for the evaluation and placement of students with disabilities.

Section 504 requires "Child Find" activities. Districts must designate the district's Section 504 coordinator(s) and include a notice of non-discrimination in its employee, parent, and student handbook(s).

What is a Section 504 coordinator?

Every school district that has more than 14 employees must have an individual designated to coordinate the district's compliance efforts with Section 504. Many districts have Section 504 coordinators at the site level, however, a site or building coordinator is not mandated by Section 504 regulations.

What are the responsibilities of the general education teacher with respect to implementation of Section 504 plans?

General education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. Failure to implement the plan can cause the school district to be in noncompliance with Section 504.

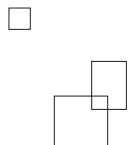
What agency has the authority to enforce Section 504?

The U.S. Department of Education, Office for Civil Rights (OCR) has been given administrative authority to enforce Section 504. Section 504 is a federal statute that may be enforced through the OCR's administrative process or through the Federal court system.

What are the consequences for a school that refuses to meet Section 504 obligations?

If a school refuses to meet its Section 504 obligations, the parents could file a local grievance with the school, request a due process hearing,³ take the school to court, or file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR). Consequences of Section 504 violations could include punitive damages, attorney fees, and the loss of federal funds.

³ See Endnotes for further information.



IDENTIFICATION, EVALUATION AND THE ACCOMMODATION PROCESS

Who should be referred for Section 504 evaluation?

A student whose problems are so severe as to prevent participation in normal learning experiences, or cause the student to be denied participation in a school program, despite application of typical accommodations and assistance, may be considered disabled and should be referred to the Section 504 team for evaluation and determination of eligibility.

How does a student qualify or become eligible to receive services and protections under Section 504?

Schools should have a team that can be convened for the purpose of deciding a student's eligibility for Section 504 services. The team evaluates the nature of the student's disability and the impact of the disability upon the student's education.

Section 504 team members should:

- be knowledgeable about the student being considered for placement, and
- understand the meaning of the evaluation data and the placement options available.

Best practice indicates that the team should include: school psychologist, social worker, counselor, administrator, teacher(s), parents, student and others, when appropriate.

What are the actual steps in a Section 504 evaluation?

- A teacher, other school staff, parent, the student, or an outside professional identifies a concern and brings it to the attention of the Section 504 team.
- The Section 504 team convenes to consider the concern.
- The Section 504 team determines if learning is being affected and if learning is being substantially limited.
- If learning is being affected, a Section 504 evaluation is conducted, parents are notified⁴ and an accommodation plan is developed.

⁴ See Endnotes for further information.

To what extent should parents be involved in the Section 504 process?

The Section 504 regulations do not specify the degree of parent participation. Best practice is to involve parents at every step along the way in their child's education. It is required that parents receive notice when their child is recommended for evaluation, eligibility or service delivery. Consent must be obtained before evaluation and/or services begin. It is best practice to invite parents to participate in all Section 504 meetings about their child.

What if a parent disagrees with the decision of the Section 504 team?

If a parent disagrees with the determination of the Section 504 team, s/he may request a due process hearing.³

³ See Endnotes for further information.

When a parent produces documentation that a physician or psychologist considers their child to be disabled under Section 504, is the team obligated to find the child eligible?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with a disability, or a student believed to have a disability which substantially limits a major life activity.² Other sources to be considered, along with medical diagnoses, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

² See Endnotes for further information.

What type of information should the Section 504 team consider ?

- Interviews
- Direct observations by the school nurse or other knowledgeable medical personnel
- Student records and files
- Information from teachers, parents, and others
- Tests and other evaluation materials
- Evaluations administered by trained personnel tailored to assess specific areas of educational need

What happens if the Section 504 team determines that a child is eligible for Section 504?

Once the Section 504 team makes an informed judgment that a child has a disability that substantially limits a major life activity,² the committee develops an appropriate Section 504 accommodation plan.

² See Endnotes for further information.

What is a Section 504 accommodation plan?

An accommodation plan, developed by the Section 504 team, specifies the plan of services (accommodations/modifications) the student needs to have for an equal opportunity to succeed in the general education classroom and participate in school programs. The plan may require environmental modifications, instructional delivery accommodations, counseling, a behavior management plan and/or transportation accommodations.

If a student is identified for Section 504 services, is there an annual or triennial review requirement?

Periodic reevaluation is required. This may be conducted in accordance with IDEA regulations, which require reevaluation at three-year intervals or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation. In addition, a reevaluation is required before there is a significant change in accommodations.

What procedural safeguards are required by Section 504?

- Parental notice of due process rights
- An opportunity for parents to review relevant records
- An impartial hearing with the opportunity for participation by the student's parents or guardians
- Representation by counsel and a review procedure
- The right of the child to have access to equal academic and nonacademic school activities
- The right to free, appropriate public education (FAPE) in the least restrictive environment (LRE), including accommodations, modifications and related services
- The right to notice regarding referral, evaluation and placement
- The right to an appeal process

THE ASSOCIATION'S ROLE

How can CTA and local chapters be involved in Section 504 compliance?

Here are several suggestions for local chapter involvement:

- Work with the local school district to ensure that educators are informed of their responsibilities and obligations under Section 504 through in-service.
- Publish the name of the district Section 504 coordinator.
- Bargain the impact of Section 504 issues.

What sample contract language does CTA have regarding Section 504?

The Employer will provide the Union, on an annual basis, with the name of the employee responsible for assuring District compliance.

The Employer will provide the Union with a copy of the grievance procedure for Section 504 issues for parents, students and employees.

The Employer shall provide all necessary resources for teachers to successfully implement a Student Accommodation Plan.

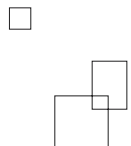
Unit members who participate in the formulation of a Student Accommodation Plan shall be granted release time from their regular duties to perform tasks related to formulating the plan.

Unit members who work beyond the workday in developing Student Accommodation Plans shall be paid additional compensation equal to their pro rata hourly rate of pay for each hour or part thereof of such work performed.

Qualified and trained nurses shall be the only bargaining unit members to dispense medication.

Is there a grievance procedure under Section 504?

Districts with more than 14 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.



WEB RESOURCES

Protecting Students With Disabilities

Frequently Asked Questions about Section 504 and the Education of Children with Disabilities

**U.S. Department of Education
Office for Civil Rights (OCR)**

www.ed.gov/about/offices/list/ocr/504faq.html

This FAQ was developed by the Chicago Office of the OCR to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, in the area of elementary and secondary education. This document clarifies pertinent requirements of Section 504 and answers many specific questions raised by parents and school districts.

Section 504/ADA Guidelines for Educators and Administrators

Colorado Department of Education

www.cde.state.co.us/cdesped/504Info.htm

The Colorado Section 504 guidelines provide information for school staff and parents regarding obligations and implementation of services under Section 504 of the Rehabilitation Act.

These guidelines address requirements and best practices under subparts C-D of the Section 504 regulations. The guidelines include information about what constitutes discriminatory practices and examples of discrimination on the basis of disability.

Council of Educators for Students with Disabilities, Inc.

www.504idea.org

This site provides a Q&A and resources to assist educators in meeting the needs of students with disabilities.

While the site focuses on students eligible under Section 504, the needs of special education students are also addressed.

Wrightslaw

Peter W.D. Wright and Pamela Darr Wright
www.wrightslaw.com

This site provides current, up-to-date information for parents, advocates, educators and attorneys about special education law and advocacy for children with disabilities.

The site contains articles, cases, newsletters, and resources about dozens of topics.

EDLAW

www.edlaw.net/publications/epubs.html

EDLAW provides access to the texts of laws governing the provision of special education, endeavoring to reformat the text of IDEA and some other materials to make them easier to read and use.

The EDLAW Electronic Library combines and links the texts of statutes, regulations, administrative interpretations, judicial decisions and other pertinent material, enabling users to better and more quickly understand both the letter and spirit of the law.

Your Rights Under Section 504 and the Americans with Disabilities Act (ADA)

U. S. Department of Health & Human Services

Office for Civil Rights
www.hhs.gov/ocr/504ada.html

This site provides information about what is prohibited under Section 504 and the ADA, what is protected under Section 504 and the ADA, what is a "physical or mental impairment", who may file a complaint with OCR and how a complaint is filed. It also addresses specific requirements as to what covered entities must and must not do to be in compliance.

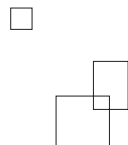
*Free Appropriate Public Education (FAPE) For Students With Disabilities:
Requirements Under Section 504 of the Rehabilitation Act of 1973*

U.S. Department of Education

Office for Civil Rights

www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html

This site includes information about who is entitled to FAPE, how appropriate education is defined, how free education is defined, and discusses FAPE provisions in the Individuals with Disabilities Education Act (IDEA).



PRINT PUBLICATIONS

*The Section 504 Guide to a Successful School-Level Program
A Handbook for Principals Including Charts, Forms and Sample Procedures*
Glenn R. Allen
order from www.lrpdartnell.com

Refer, in the 2001 edition, especially to the following forms:

- Consent For Individual Evaluation, p 46
- Building Team Eligibility Determination - Part One and Part Two, p 47 & p 48
- Accommodation Plan - Part One & Part Two, p 49-50 & p 51
- Section 504 School Review Checklist, p 57-58
- Referral for District Services, p 59

Special Education Guide for California School Administrators
Frederick J. Weintraub
available at www.webbookstore.net

The guide is designed to provide quick, authoritative and pertinent information regarding the provision of special education services in the schools. A majority of the information reflects the policies and practices as addressed in the Individuals with Disabilities Education Act (IDEA) 1997 reauthorization. The guide's content provides many of the answers to questions regarding the implementation of special education programs and rules. References to law, best practices and court decisions are provided at the end of each topic.

Section 504 Compliance Advisor

Monthly Newsletter

LRP Publications

www.lrpdartnell.com

Each monthly issue of Section 504 Compliance Advisor explains the law's requirements and helps foster understanding of Section 504. It includes case studies and information on handling complaints, from the letter of notification through OCR investigations and resolutions. It also provides detailed tips and guidance on disciplining students under Section 504.

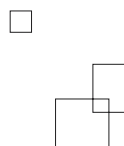
Section 504 Compliance Advisor

Newsletter: May 2004, Volume 8, Issue 3

LRP Publications

www.lrp.com

The focus of the May 2004 issue of this newsletter is: harassment and sample disability harassment policy; understanding Section 504's LRE requirement; nondiscriminatory, comparable alternate placements—key to successful Section 504 compliance; and a 2-minute tutorial on parameters of manifestation determination.



ENDNOTES

1 What is a physical or mental impairment that substantially limits a major life activity?

The Section 504 regulation, at 34 C.F.R. 104.3(j)(i), defines a physical or mental impairment as 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.

The regulation does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

2 How are "major life activities" defined?

Major life activities, as defined in the Section 504 regulation at C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. This list is not exhaustive. Other functions can be major life activities for the purposes of Section 504.

3 What are due process hearings?

Due process hearings provide impartial hearings for parents or guardians who disagree with the identification, evaluation or placement of students with disabilities. Hearings are conducted at the local level by an impartial person not connected with the school district. The person need not be an attorney. Decisions may be appealed to court.

4 Which 504 activities require notice and/or consent?

A notice to the parent or guardian is required with respect to identification, evaluation and placement under Section 504. A district would be wise to give the notice in writing. Section 504 requires notice before a "significant change in placement." If a handicapping condition under IDEA is suspected, IDEA regulations must be followed.

Section 504 evaluations require notice and consent. Periodic reevaluations are required. Reevaluation is required before a significant change in placement. Section 504 does not provide for outside independent evaluations.

