

# SECTION 504 OF THE REHABILITATION ACT

---

by Jan Van Blarcum, Ph.D., Founder and Owner  
Creative Tutors International, Inc. and Creative  
Learning 4 Kids, Inc. 2011

Since the 1960's, there has been a pivotal change in the federal legislation concerning individuals either directly or indirectly with disabilities. These changes have made the most impact in the core of current protection against discrimination and current guarantees of equal educational opportunities for children and youth who have disabilities in the United States.

Major changes were instituted by these influential laws:

1. IDEA – the Individuals with Disabilities Education Act
2. NCLB – No Child Left Behind Act
3. ADA - Americans with Disabilities Act
4. Assistive Technology Act, and
5. Section 504 of the Rehabilitation Act.

## The Rehabilitation Act of 1973

The Rehabilitation Act of 1973 was amended by Section 504 in 1973. As Section 504 relates to special education, many valuable and important rights can be served through this law. With the Section 504 added, it is a civil rights law that prohibits discrimination on the basis of disability. This law applies to public elementary and secondary schools, among other entities. Ironically, Section 504 was the last sentence in the 1973 Act. More than three years passed before any implementing rules were issued. Frank Bowe, head of ACCD, launched a nationwide demonstration accompanied by the American Coalition of Citizens with Disabilities. Their #1 priority became “Sign 504.” The movement began in March of 1977 and extended to the end of April, 1977 when regulations were finally issued. Over the next few years, Section

504 became a controversial issue because it gave people with disabilities rights similar to those of other minority groups in the Civil Rights Act of 1964. During the presidency of Ronald Reagan and his administration, many efforts were made to weaken Section 504. These attempts to weaken Section 504 not only failed, but resulted in the Americans with Disabilities Act of 1990. In turn, the Americans with Disabilities Act of 1990 extended Section 504 to much of the private sector such as private employers, stores, hotels, and restaurants as well as specifically stating that it made no amendments, weakening or otherwise, to Section 504.

Section 504 of the Rehabilitation Act of 1973 protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance, including federal funds. Section 504 provides that: *“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his 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.”*<sup>1</sup>

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive funds from ED. Recipients of these funds include public school districts, institutions of higher education, and other state and local education agencies. ED has published a regulation implementing Section 504 (34 C.F.R. Part 104) and maintains an Office for Civil Rights (OCR), with 12 enforcement offices and a headquarters office in Washington, D.C., to

---

<sup>1</sup> Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794

enforce Section 504 and other civil rights laws that pertain to recipients of funds.<sup>2</sup>

## FAPE

FAPE, “free appropriate public education”, is a part of Section 504. As its title suggest, its sole purpose is to ensure each qualified person with a disability who is in the school jurisdiction, regardless of the nature or severity of the person’s disability, a free appropriate public education.

All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education. The ED Section 504 regulation defines a person with a disability as “any person who:

- has a physical or mental impairment which substantially limits one or more major life activities,
- has a record of such an impairment, or
- is regarded as having such an impairment.”<sup>3</sup>

For elementary and secondary education programs, a qualified person with a disability is a person with a disability who is:

- of an age during which it is mandatory under state law to provide such services to persons with disabilities;
  - of an age during which persons without disabilities are provided such services;
- or

- entitled to receive a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). In general, all school-age children who are individuals with disabilities as defined by Section 504 and IDEA are entitled to FAPE.

An appropriate education may comprise education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all, or portions of, the school day. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by related services such as speech therapy, occupational and physical therapy, psychological counseling, and medical diagnostic services necessary to the child’s education.

An appropriate education will include:

- education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met;
- the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;
- evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and
- establishment of due process procedures that enable parents and guardians to:
  - receive required notices;
  - review their child’s records; and

---

<sup>2</sup> Title II of the Americans with Disabilities Act of 1990, (ADA), 42 U.S.C. § 12131

<sup>3</sup> The Section 504 regulation uses the term “handicap.” However, Congress has amended the Rehabilitation Act of 1973 and has replaced the term “handicap” with the term “disability.” The terms “handicap” and “disability” have the same meaning. This pamphlet uses only the term “disability.”

## SECTION 504 OF THE REHABILITATION ACT

- challenge identification, evaluation & placement decisions.

Due process procedures must also provide for an impartial hearing with the opportunity for participation by parents and representation by counsel, and a review procedure.

Education services must meet individual needs. To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of individuals with disabilities.

One way to ensure that programs meet individual needs is through the development of an individualized education program (IEP) for each student with a disability. IEPs are required for students participating in the special education programs of recipients of funding under the IDEA. The quality of education services provided to students with disabilities must equal the quality of services provided to nondisabled students. Teachers of students with disabilities must be trained in the instruction of individuals with disabilities. Facilities must be comparable and appropriate materials and equipment must be available.

Students with disabilities may not be excluded from participating in nonacademic services and extracurricular activities on the basis of disability. Persons with disabilities must be provided an opportunity to participate in nonacademic services that is equal to that provided to persons without disabilities. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, and

referrals to agencies that provide assistance to persons with disabilities and employment of students.

Students with disabilities must be educated with nondisabled students. Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the education needs of the students with disabilities. A recipient of ED funds must place a person with a disability in the regular education environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education, to the maximum extent appropriate to their individual needs.

As necessary, specific related aids and services must be provided for students with disabilities to ensure an appropriate educational setting. Supplementary aids may include interpreters for students who are deaf, readers for students who are blind, and door-to-door transportation for students with mobility impairments.

A recipient of ED funds that places an individual with disabilities in another school is responsible for taking into account the proximity of the other school to the student's home. If a recipient operates a facility for persons with disabilities, the facility and associated activities must be comparable to other facilities, services, and activities of the recipient.

Evaluation and placement decisions must be made in accord with appropriate procedures. Failure to provide persons with disabilities with an appropriate education frequently occurs as a result of misclassification and inappropriate placement. It is illegal to base individual placement decisions on presumptions and

stereotypes regarding persons with disabilities or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every student who is hearing impaired, regardless of the severity of the child's disability, must be placed in a state school for the deaf.

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials. A school district must conduct or arrange for an individual evaluation at no cost to the parents before any action is taken with respect to the initial placement of a child who has a disability, or before any significant change in that placement.

Recipients of ED funds must establish standards and procedures for initial and continuing evaluations and placement decisions regarding persons who, because of a disability, need or are believed to need special education or related services.

These procedures must ensure that tests and other evaluation materials:

- 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;
- are tailored to assess specific areas of education need and are not designed merely to provide a single general intelligence quotient; and
- 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).

Recipients must draw upon a variety of sources in the evaluation and placement process so that the possibility of error is minimized. All significant factors related to the learning process must be considered. These sources and factors include, for example, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. "Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group." (See Appendix A to 34 CFR Part 104, Evaluation and Placement.) Information from all sources must be documented and considered by a group of knowledgeable persons, and procedures must ensure that the student is placed with nondisabled students to the greatest extent appropriate.

Periodic reevaluation is required. This may be conducted in accordance with the IDEA regulation, which requires reevaluation at three-year intervals (unless the parent and school district agree reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation.

Recipients must have due process procedures for the review of identification, evaluation, and placement decisions. Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services. Parents must be told about these procedures. In

## SECTION 504 OF THE REHABILITATION ACT

addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records. The due process procedures must allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions. If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for their participation and for representation by counsel. A review procedure also must be available to parents or guardians who disagree with the hearing decision.<sup>4</sup>

Since 1975, every child with a disability has been entitled to a free and appropriate public education (FAPE) designed to meet his individual needs under the rules and regulations of the Individuals with Disabilities Education Act (IDEA). This federal law governs all special education services and provides some funding to state and local education agencies to guarantee special education and related services for those students who meet the criteria for eligibility in a number of distinct categories of disability, each of which has its own criteria.

Free education is subject to several definitions. Recipients operating federally funded programs must provide education and related services free of charge to students with disabilities and their parents or guardians. Provision of a free education is the provision of education and related services without cost to the person with a disability or his or her parents or guardians, except for fees equally imposed on nondisabled persons or their parents or guardians. If a recipient is unable to provide a free appropriate public education itself, the recipient may place a person with a disability in, or refer such person

to, a program other than the one it operates. However, the recipient remains responsible for ensuring that the education offered is an appropriate education, as defined in the law, and for coverage of financial obligations associated with the placement. The cost of the program may include tuition and other related services, such as room and board, psychological and medical services necessary for diagnostic and evaluative purposes, and adequate transportation. Funds available from any public or private source, including insurers may be used by the recipient to meet the requirements of FAPE. If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school. To meet the requirements of FAPE, a recipient may place a student with a disability in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if the student with a disability were placed in the recipient's program.

### ***FAPE places several provisions in the Individuals with Disabilities Education Act (IDEA)***

Part B of IDEA requires participating states to ensure that a free appropriate public education (FAPE) is made available to eligible children with disabilities in mandatory age ranges residing in the state. To be eligible, a child must be evaluated as having one or more of the disabilities listed in IDEA and determined to be in need of special education and related services.

---

<sup>4</sup> Family Education:  
<http://school.familyeducation.com/specialeducation/ada/38439.html#ixzz1hkwbYBoU>

Evaluations must be conducted according to prescribed procedures. The disabilities specified in IDEA include: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, and multiple disabilities. Additionally, states and local education agencies (LEAs) may adopt the term “developmental delay” for children aged 3 through 9 (or a subset of that age range) who are experiencing a developmental delay as defined by the state and need special education and related services.

The requirements for FAPE under IDEA are more detailed than those under Section 504. In specific instances detailed in the Section 504 regulation (for example, with respect to reevaluation procedures and the provision of an appropriate education), meeting the requirements of IDEA is one means of meeting the requirements of the Section 504 regulation.

IDEA requirements apply to states receiving financial assistance under IDEA. States must ensure that their political subdivisions that are responsible for providing or paying for the education of children with disabilities meet IDEA requirements. All states receive IDEA funds. Section 504 applies to any program or activity receiving ED financial assistance.

IDEA is administered by ED’s Office of Special Education Programs (OSEP), a component of ED’s Office of Special Education and Rehabilitative Services (OSERS). For more information about IDEA, contact OSERS at 400 Maryland Ave. S.W., Washington, DC 20202-7100. [Additional information is available.](#)

If a student is placed in a private school because a school district cannot provide an appropriate

program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student’s parents or guardian choose to place the child in a private school, the school district is not required to pay for the student’s education in the private school. If a recipient school district places a student with a disability in a program that requires the student to be away from home, the recipient is responsible for the cost of room and board and nonmedical care.

To meet the requirements of FAPE, a recipient may place a student with a disability in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if the student with a disability were placed in the recipient’s program.

The major differences between IDEA and Section 504 are in the flexibility of the procedures. For a child to be identified as eligible for services under Section 504, there are less specific procedural criteria that govern the requirements of the school personnel. Schools may offer a student less assistance and monitoring with Section 504 because there are fewer regulations by the federal government to instruct them, especially in terms of compliance. In contrast, a child identified for services under IDEA must meet specific criteria. The degree of regulation is more specific in terms of time frames, parental participation, and formal paperwork requirements. IDEA also addresses the special education of students with disabilities from preschool to graduation only (from ages 3 to 21). Section 504 covers the lifespan and safeguards the rights of persons with disabilities in many areas of their lives, including employment, public access to buildings, transportation, and education.

## SECTION 504 OF THE REHABILITATION ACT

Both schools and parents should be familiar with the criteria for identification, eligibility, appropriate education, and due process procedures under Section 504 and IDEA.

### Identification and Eligibility for Section 504 and IDEA

Children with disabilities must be identified to determine if they are eligible for services.

Under IDEA guidelines, school districts are required to identify and evaluate all children suspected of having a disability whose families reside within the district. Section 504 does not have this requirement.

#### IDEA

- Covers all school-aged children who fall within one or more specific categories of qualifying conditions (i.e., autism, specific learning disabilities, speech or language impairments, emotional disturbance, traumatic brain injury, visual impairment, hearing impairment, and other health impairments).
- Requires that a child's disability adversely affects her educational performance.

#### Section 504

- Covers individuals who meet the definition of qualified "handicapped" person -- for example, a child who has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as handicapped by others. (Major life activities include: walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.)

- Does not require that a child need special education to qualify. Note: Students who are ineligible for services or are no longer entitled to services under **IDEA** (e.g., kids with LD who no longer meet **IDEA** eligibility criteria) may be entitled to accommodations under Section 504.

#### Evaluation

A child with a disability is assessed to determine what services, if any, are needed.

#### IDEA

- Requires that the child be fully and comprehensively evaluated by a multidisciplinary team.
- Requires informed and written parental consent.
- Requires a reevaluation of the child at least once every three years, or if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.
- Provides for independent evaluation at the district's expense if parents disagree with first evaluation.
- Does not require reevaluation before a significant change in placement.

#### Section 504

\*Evaluation draws on information from a variety of sources and is documented.

- Decisions about the child, evaluation data, and placement options are made by knowledgeable individuals. Such decisions do not require written consent of the parents, only that the parents are notified.
- Requires "periodic" reevaluation.
- No provisions made for independent evaluation at school's expense.
- Requires reevaluation before a significant change in placement.

## ***Responsibility to Provide FAPE***

### **IDEA**

- Requires an individualized education program (IEP).
- "Appropriate" education means a program designed to provide "educational benefit" for a person with disabilities.
- Placement may be any combination of special education and general education classrooms.
- Provides related services, if required. Related services may include speech and language therapy, occupational therapy, physical therapy, counseling services, psychological services, social services, and transportation.

### **Section 504**

- Does not require an IEP, but does require a plan.
- "Appropriate" means an education comparable to the education provided to those students who are not disabled.
- Placement is usually in a general education classroom. Children can receive specialized instruction, related services, or accommodations within the general education classroom.
- Provides related services, if needed.

## ***Due Process Procedures***

Sometimes parents and school districts disagree about how a child with disabilities should be educated. When this happens, there are procedures in place to handle these disagreements.

### **IDEA**

- Must provide impartial hearings for parents who disagree with the identification, evaluation, or placement of the student.
- Requires written consent.

- Describes specific procedures.
- An impartial appointee selects a hearing officer.
- Provides "stay-put" provision (the student's current IEP and placement continues to be implemented) until all proceedings are resolved.
- Parents must receive ten days' notice prior to any change in placement.
- Enforced by U.S. Department of Education, Office of Special Education.

### **Section 504**

- Must provide impartial hearings for parents who disagree with the identification, evaluation, or placement of the student.
- Does not require parental consent.
- Requires that parents have an opportunity to participate and be represented by legal counsel -- other details are left to the discretion of the school.
- A hearing officer is usually appointed by the school.
- No "stay-put" provisions.
- Does not require that parents are notified prior to the student's change of placement, but they still must be notified.
- Enforced by U.S. Department of Education, Office of Civil Rights.

*Adapted from "Understanding the Differences Between IDEA and Section 504," Teaching Exceptional Children, vol. 34, no. 3, Jan/Feb 2002, published by Council for Exceptional Children.*

## **CLARIFICATIONS: SECTION 504**

In this section, Section 504 is broken into composites that address specific areas for



## SECTION 504 OF THE REHABILITATION ACT

individual learning problems. Section 504 is related into the specific areas of learning disabilities. Therefore, it will include dyslexia and its different forms such as dysgraphia, autism, ADHD, ADD, and other learning disabilities that may benefit from it.

Section 504 is a part of the Rehabilitation Act of 1973 that prohibits discrimination based upon disability. Section 504 is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met. Through this area, all children are given the right to an education that meets their specific needs. No matter the ethnicity, culture, education of parents or parent's income.

Section 504 states that: "No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his 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..."<sup>5</sup> This allows for the disabled student to be a part of the regular classroom and all activities of the school.

To be covered under Section 504, a student must be "qualified" (which roughly equates to being between 3 and 22 years of age, depending on the program, as well as state and federal law, and must have a disability).<sup>6</sup> Notice the age coverage of this section. The child may be enrolled by the age of 3 thus gaining benefits of pre-educational and socialization. The child may be kept in the public school system until he/she reaches the age of 22 at which time new arrangements must be made outside of the public schools.

As defined by federal law: "An individual with a disability means any person who: (i) has a mental or physical impairment that substantially limits one or more major life activity; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment".<sup>7</sup> The section is wide open to interpretation. However, added sections do help in qualifying the word "disability."

An impairment, as used in Section 504, may include any disability, long-term illness, or various disorder that "substantially" reduces or lessens a student's ability to access learning in the educational setting because of a learning-, behavior- or health-related condition. ["It should be emphasized that a physical or mental impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities".<sup>8</sup> Qualifying under "long-term illness" will need to be qualified by physicians.

The paragraph above uses the term "impairment." The following paragraph will define "impairment" based on Section 504.

An impairment, as used in Section 504, may include any disability, long-term illness, or various disorder that "substantially" reduces or lessens a student's ability to access learning in the educational setting because of a learning-, behavior- or health-related condition. "It should be emphasized that a physical or mental impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities".<sup>9</sup>

---

<sup>5</sup> 29 U.S.C. §794(a), 34 C.F.R. §104.4(a)

<sup>6</sup> 34 C.F.R. §104.3(k)(2)

---

<sup>7</sup> 34 C.F.R. §104.3(j)(1)

<sup>8</sup> Appendix A to Part 104, #3

<sup>9</sup> Appendix A to Part 104, #3

Many students have conditions or disorders that are not readily apparent to others. They may include conditions such as specific learning disabilities, diabetes, epilepsy and allergies. Hidden disabilities such as low vision, poor hearing, heart disease or chronic illness may substantially limit that child's ability to receive an appropriate education as defined by not be obvious, but if they Section 504, they may be considered to have an "impairment" under Section 504 standards. As a result, these students, regardless of their intelligence, will be unable to fully demonstrate their ability or attain educational benefits equal to that of non-disabled students (The Civil Rights of Students with Hidden Disabilities under Section 504 of the Rehabilitation Act of 1973 – Pamphlet). The definition does not set forth a list of specific diseases, conditions or disorders that constitute impairments because of the difficulty of ensuring the comprehensiveness of any such list. While the definition of a disabled person also includes specific limitations on what persons are classified as disabled under the regulations, it also specifies that only physical and mental impairments are included, thus "environmental, cultural and economic disadvantage are not in themselves covered".<sup>10</sup>

"Major life activities" is further explained as: Major life activities include, but are not limited to: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others and working. As of January 1, 2009 with the reauthorization of the Americans with Disabilities Amendment Act, this list has been expanded to also include the life activities of reading, concentrating, standing, lifting, bending, etc. This may include individuals with AD/HD, dyslexia, cancer, diabetes, severe allergies, chronic asthma, Tourette's syndrome,

digestive disorders, cardiovascular disorders, depression, conduct disorder, oppositional defiant disorder, HIV/AIDS, behavior disorders and temporary disabilities (e.g., broken writing arm, broken leg, etc.). Conditions that are episodic or in remission are also now covered if they create a substantial limitation in one or more major life activity while they are active. Students who are currently using illegal drugs or alcohol are not covered or eligible under Section 504.

"Substantially limits" is clarified as: Substantially limits is not defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, "this is a determination to be made by each local school district and depends on the nature and severity of the person's disabling condition." New guidance from the Americans with Disabilities Amendment Act states that Section 504 standards must conform with the ADAAA and is "intended to afford a broad scope of protection to eligible persons." In considering substantial limitations, students must be measured against their same age, non-disabled peers in the general population and without benefit of medication or other mitigating measures such as learned behavioral or adaptive neurological modifications, assistive technology or accommodations.

If the child must undergo evaluation under Section 504 who must refer that child in order for him/her to be evaluated?

Anyone can refer a child for evaluation under Section 504. However, while anyone can make a referral, such as parents or a doctor, OCR has stated in a staff memorandum that "the school district must also have reason to believe that the child is in need of services under Section 504 due to a disability" (OCR Memorandum, April 29, 1993). Therefore, a school district does not have to refer or evaluate a child under Section

---

<sup>10</sup> Appendix A to Part 104, #3

504 solely upon parental demand. The key to a referral is whether the school district staff suspects that the child is suffering from a mental or physical impairment that substantially limits a major life activity and is in need of either regular education with supplementary services or special education and related services [letter to Mentink, 19 IDELR 1127 (OCR) 1993]. If a parent requests a referral for evaluation, and the school district refuses, the school district must provide the parent with notice of their procedural rights under Section 504.

After evaluation a student's results will be studied in order to determine if he/she is qualified and eligible under Section 504 for services. This decision is made by following federal regulations.

According to the federal regulations: "...placement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, placement options, least restrictive environment requirements, and comparable facilities..."<sup>11</sup>

Unlike Special Education, the federal regulations for Section 504 do not require or even mention that parents are to be a part of the decision-making committee. The decision to include parents in the decision-making committee is a determination that is made by each school district and should be spelled out in the district's procedures for implementing Section 504. Parents should at least be asked and encouraged to contribute any information that they may have (e.g., doctor's reports, outside testing reports, etc.) that would be helpful to the Section 504 committee in making their determination of what the child may need. Schools are expected to make sound educational decisions as to what the child needs in order to receive an appropriate education.

### *Information used in doing an evaluation under Section 504*

Under Section 504, no formalized testing is required. The 504 Committee should look at grades over the past several years, teacher's reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records and adaptive behavior information. Schools must consider a variety of sources. A single source of information (such as a doctor's report) cannot be the only information considered. Schools must be able to assure that all information submitted is documented and considered.

Parents are guaranteed the right that no child can be placed under Section 504 without their knowledge.

Parents must always be given notice before their child is evaluated and/or placed under Section 504.<sup>12</sup> Parents must also be given a copy of their child's Section 504 accommodation plan if the committee determines that the child is eligible under Section 504.

Upon acceptance into the 504 program, the child will receive appropriate types of accommodations.

Each child's needs are determined individually. Determination of what is appropriate for each child is based on the nature of the disabling condition and what that child needs in order to have an equal opportunity to compete when compared to the non-disabled. There is no guarantee of A's or B's or even that the student will not fail. Students are still expected to produce. The ultimate goal of education for all students, with or without disabilities, is to give students the knowledge and compensating skills

---

<sup>11</sup> 34 C.F.R. §104.35(c)(3)

---

<sup>12</sup> (34 C.F.R. §104.36

they will need to be able to function in life after graduation.

***Accommodations that may be used, but are not limited to, include:***

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements
- Behavior intervention plans
- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Taping lectures
- Oral tests
- Individual contracts

Whether or not the child is to be placed in the regular classroom or in a “special class” is determined by the following.

A Section 504 eligible child will always be in the regular classroom unless (according to federal regulations): “... the student with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by §104.34”.<sup>13</sup>

Discipline of the learning disabled child is often discussed but Section 504 sets standards for discipline.

Children under Section 504 are still expected to follow the district’s student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior if the child is going to be removed from the regular setting for longer than 10 days. This does not mean that a student with a disability cannot be sent to a discipline center or that they cannot go to in-school suspension, or be suspended from school for three days. Very strict guidelines exist for schools in discipline issues with students who have a disability under Section 504. The campus or district 504 coordinator can assist parents in this area should they have additional questions concerning the discipline of students with disabilities. Children having disabilities with behavioral components should have individual discipline plans as well as behavior intervention plans.

As can be expected parents will and often do disagree with the school’s evaluation. When this occurs parents may expect the school district to pay for any outside independent evaluation that the parents deem necessary. Section 504 sets the standard for this also.

Under Section 504, schools are not required to pay for an outside independent evaluation. If a parent disagrees with the school’s evaluation decision, they may request a due process hearing or file a complaint with the Office for Civil Rights. (Ask the district or campus for a copy of Notice of Parent and Student Rights Under Section 504 of the Rehabilitation Act of 1973.)

***Students must be re-evaluated periodically***

While there are no specific time lines on this issue, students must be re-evaluated at least every three years or whenever there is going to be a “significant change in placement.” The campus 504 committee should re-evaluate your child’s plan every year to make sure that his or

---

<sup>13</sup> 34 C.F.R. §104.34, Appendix A, #24

## SECTION 504 OF THE REHABILITATION ACT

her accommodation plan is appropriate based on their current schedule and individual needs. The accommodation plan may be revised at any time during the school year if needed.

All students need education beyond the classroom, and Section 504 includes those needs. The ability to allow these children to participate in nonacademic services is provided.

Districts must provide equal opportunity in areas such as counseling, physical education and/or athletics, transportation, health services, recreational activities, and special interest groups or clubs. However, the “no pass, no play” standard used for students in most states also applies to students under Section 504.<sup>14</sup>

5. File a complaint with the appropriate regional Office for Civil Rights. For additional information, contact: U.S. Department of Education, Washington, D.C. 20202-1100

(800) 421-3481  
www.ed.gov/ocr  
E-mail: ocr@ed.gov

**CAUTION** – This paper is the interpretation of Section 504 by an individual. A qualified licensed attorney specializing in Section 504 disabilities should be consulted.

## Rights of the parents

### *Rights of the parents include:*

1. Receive notice regarding the identification, evaluation and/or placement of your child;
2. Examine relevant records pertaining to your child;
3. Request an impartial hearing with respect to the district’s actions regarding the identification evaluation, or placement of your child, with an opportunity for the parent/guardian to participate in the hearing, to have representation by an attorney, and have a review procedure;
4. File a complaint with your school District Section 504 Coordinator, who will investigate the allegations regarding Section 504 matters other than your child’s identification, evaluation and placement.

---

<sup>14</sup> 34 C.F.R. §104.37