



SECTION 504

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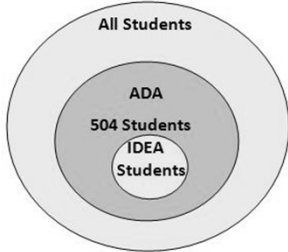


Why are we here today?

Today, education is perhaps the most important function of state and local governments . . . it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available on equal terms. We conclude that in the field of education, the doctrine "separate and equal" has no place.

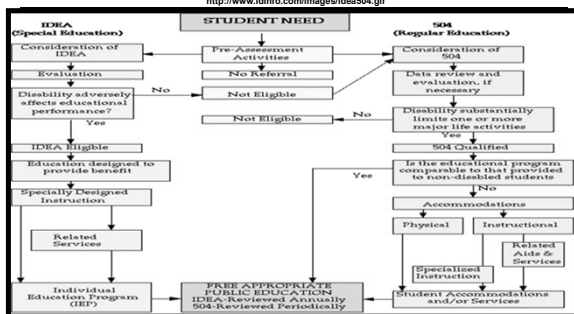
- Brown v. Board of Education, 1954

Relationship between IDEA and 504 Eligibility



SO, WHAT IF A STUDENT IS DETERMINED INELIGIBLE FOR SERVICES UNDER IDEA?

<http://www.idinfo.com/images/idea504.gif>



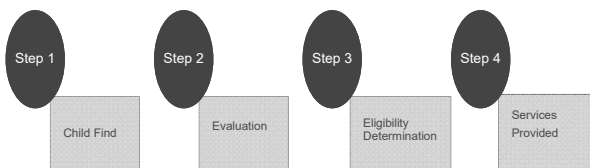
Who does Section 504 Apply to?

Section 504 of the Rehabilitation Act of 1973 states "No otherwise qualified individual with a disability . . . , 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. . . ."

About 504

- Requires schools to provide eligible students with disabilities equal access (both physical and academic) to services, programs, and activities
- Section 504 is a civil rights law not a special education law

504 Process



Step 1

Child is identified as possibly needing
Special education or related services

Child Find

School districts must:

- Identify
- Locate, and
- Evaluate

Any child who needs or is believed to be in need of special education services or related services.

Why might a school suspect a child could be eligible under 504?

- Information that student has been hospitalized
- Information that student has DSM-V diagnosis
- Information that student takes medication
- Information that student receives counseling
- Information student has medical impairment
- Numerous or increasing disciplinary incidents
- Truancy/Attendance issues
- Is being considered for retention

Why might a school to suspect a child could be eligible under 504?

- Indicators of depression or withdrawal
- Indicators of attention or behavior problems
- Poor or declining grades/assessment results
- Poor results/lack of improvement following RTI
- Parent concerns/request for referral
- Referrals by outside providers
- Is evaluated under IDEA and is found not eligible for special education services

Step 2

Child is evaluated

Evaluation

LEA must conduct an evaluation of any person who, because of handicap, needs, or is believed to need, special education or related services before taking any action with respect to the initial placement of the person in regular or special education

Evaluation must address all suspected areas of disability

Step 3

Eligibility Determination

Eligibility Determination

In January 2009, revisions to the ADA Amendments Act (ADAA) of 2008 went into effect and changed how individuals are determined eligible under Section 504

Team Meeting

- Persons knowledgeable about the child
- Persons who can interpret the evaluation data
- Persons who understand placement options
- Parents
- Students

❖34 CFR Section 104.35(c)(3)

**ELIGIBILITY SECTION 504 OF THE REHABILITATION ACT
29 U.S.C. §705(20)(B)**

Team must determine whether the student has:

- A physical or mental impairment that *substantially limits one or more major life activities* of such individual;
- A record of such an impairment; or
- Is regarded as having such an impairment

**WHAT IS A MAJOR LIFE ACTIVITY?
34 C.F.R. §104.3(J)(2)(ii)**

Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning, eating, reading, concentrating, thinking, communicating, bending, lifting, sleeping and working.

It is not an exhaustive list.

**WHAT IS A PHYSICAL OR MENTAL IMPAIRMENT?
34 C.F.R. §104.3(J)(2)(i)**

It can be 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*. It is a non-exhaustive list.

NOTE: THE DEFINITION OF DISABILITY IS TO BE CONSTRUED IN FAVOR OF BROAD COVERAGE.

42 U.S.C. 12102(4)(B)

It was the intent of Congress in the ADA Amendments that the primary object of attention . . . should be whether entities covered under the ADA have complied with their obligations, and . . . the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis.

NOTE: ELIGIBILITY UNDER SECTION 504 REQUIRES ONLY THAT THE STUDENT NEEDS SPECIAL EDUCATION OR RELATED SERVICES, **NOT BOTH**

Step 4

Provide Services

Provision of FAPE under 504

Section 504 requires schools provide eligible students appropriate educational services designed to meet the individual needs of such students *to the same extent as the needs of students without disabilities are met.*

If determined eligible

- Develop Section 504 Service Plan
- Placement in LRE
- Have a right to placement in the least restrictive environment (34 CFR § 104.34) Must be served in the same setting as nondisabled students “to the maximum extent appropriate to the needs of the handicapped person”
- Special Education or Related services

**SECTION 504 ELIGIBILITY
SPECIAL EDUCATION OR RELATED SERVICES**

SPECIAL EDUCATION SERVICES

Special education may include specially designed instruction in classrooms, at home, or in private or public institutions.

RELATED SERVICES

Means developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

Procedural safeguards

Section 504 requires school districts to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

Discipline under 504

The rules for discipline are interpreted exactly the same as they are under IDEA

Discipline

- For up to 10 days, school personnel may suspend students with disabilities who violate the code of student conduct to the extent that such suspensions are applied to students without disabilities.
- School still has to provide FAPE or opportunity to make progress in general education curriculum and towards IEP goals.

Discipline

- If a suspension will exceed 10 consecutive school days or total more than 10 cumulative school days, this is a change of placement.
- School may unilaterally change placement to an interim alternative education setting ("IAES") for up to 45 school days if student possessed weapon or illegal drugs or caused serious bodily injury.

Discipline

- For suspension which is change in placement, school must conduct a manifestation determination within 10 school days.
- The LEA, the parent, and the relevant members of the IEP team shall review all relevant information in the student's file and determine:
 - if the conduct in question was caused by or had a direct and substantial relationship to the student's disability, or
 - if the conduct in question was the direct result of the school's failure to implement the IEP.

Discipline

- If conduct is **not** a manifestation of the student's disability, the school may apply the relevant disciplinary procedures in the same manner and for the same duration as are applied to non-disabled students.
- IEP team must determine what services, if any, student needs to appropriately progress in general education curriculum and advance toward IEP goals.

Discipline

- If conduct **is** a manifestation, the student shall be returned to the placement from which the student was removed:
 - unless the parent and the LEA agree to a change of placement as part of the modification of the BIP, or
 - unless the student's behavior involved possession of a weapon or illegal drugs or involved inflicting serious bodily injury.

Enforcement

- U.S. Department of Education, Office for Civil Rights Complaint
- Local Grievance
- Local Due Process Hearings
- Legal Remedies



**DEAR COLLEAGUE LETTER
ADA AMENDMENTS ACT OF 2008**
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html>

Dear Colleague Letter

OFFICE OF THE ASSISTANT SECRETARY
January 19, 2012

Dear Colleague,

This year, we will celebrate the 32nd anniversary of the landmark Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213. We at the Office for Civil Rights (OCR) in the United States Department of Education (Department) recognize the progress our country has made toward ensuring that educational opportunities are provided free from disability discrimination. As Secretary Arne Duncan has stated, the Department is "strengthening our efforts to ensure that all students, including those with disabilities, have the tools they need to benefit from a world-class education that prepares them for success in college and careers."

Pursuant to a delegation by the U.S. Attorney General, OCR shares in the enforcement of Title II of the ADA (Title II), 28 C.F.R. § 35.150(b)(2). Title II prohibits discrimination on the basis of disability by public entities, including public elementary, secondary, and postsecondary schools, regardless of whether they receive Federal financial assistance. Title II requires that qualified individuals with disabilities, including students, parents, and other program participants, are not excluded from or denied the benefits of services, programs, or activities of a public entity, or otherwise subjected to discrimination by a public entity, by reason of disability. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. Recipients of this Federal financial assistance from the Department include public school districts, other state and local educational agencies, and institutions of higher education.

Through our civil rights enforcement activities, and in responding to requests for technical assistance, OCR has learned that additional guidance on the requirements of the ADA and Section 504 in the elementary and secondary school context would be helpful, especially in light of changes to the law made by the ADA Amendments Act of 2008 (Amendments Act).² To that end, OCR has prepared the attached "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools" (Amendments Act FAQ). With passage of the Amendments Act, Congress intended to ensure a broad scope of protection under the ADA and to convey that the question of whether an individual's impairment is a disability under the ADA and Section 504 should not demand extensive analysis. To effectuate the ADA's purpose, the Amendments Act

**QUESTIONS AND ANSWERS
ON THE ADA AMENDMENTS ACT OF 2008**
<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.¹

Q1. What disability-related Federal laws does OCR enforce?

A. OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). Recipients of this Federal financial assistance include public school districts, other state and local educational agencies, and institutions of higher education.

OCR also enforces Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive Federal financial assistance. Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II for all programs, services, and regulatory activities relating to the operation of public elementary and secondary educational programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

Because Title II essentially extends the antidiscrimination prohibition embodied in Section 504 to all actions of State and local governments, the standards adopted in Title II are generally the same as those required under Section 504. See 28 C.F.R. § 35.103(a). Title II and its implementing regulations do not establish a lesser standard of protection than Section 504 does. *Id.* To the extent that Title II provides greater protection, covered entities must also comply with Title II's substantive requirements.²

This guidance focuses on Section 504 and Title II in the context of public elementary and secondary education programs.

**FREQUENTLY ASKED QUESTIONS
REVISED AFTER 2008 ADA AMENDMENTS**
<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

Protecting Students With Disabilities

Frequently Asked Questions About Section 504 and the Education of Children With Disabilities
Introduction | Interrelationship of IDEA and Section 504 | Protected Students | Evaluation | Placement |
Procedural Safeguards | Terminology

This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations, as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, of Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73069 (December 1, 2008).

INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 (Section 504)). Most of these concerns identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of

**FAPE UNDER SECTION 504
REVISED AFTER 2008 ADA AMENDMENTS**
<https://www2.ed.gov/about/offices/list/ocr/docs/dlde-FAPE504.html>

Final public

August 2010
U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202

**Free Appropriate Public Education
for Students With Disabilities:
Requirements Under Section 504 of
The Rehabilitation Act of 1973**

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 his 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 . . ."

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 Sects. 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 enforce Section 504 and other civil rights laws that pertain to recipients of funds.

The Section 504 regulation requires a school district to provide a "free appropriate public education" (FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.

This pamphlet answers the following questions about FAPE according to Section 504:

- Who is entitled to a free appropriate public education?
- How is an appropriate education defined?
- How is a free education defined?

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