



Section 504 of the Rehabilitation Act of 1973

Guidelines for Implementation

In the District of Columbia

January 25, 2012

HISTORY OF REHABILITATION ACT

- Disability Civil Rights Law, Passed by Congress in 1973
- Office for Civil Rights (OCR) in the US Dept. of ED
Monitors for Compliance
- Precursor to the Americans with Disabilities Act (1990)
- Section 504: Focus on Prohibition of Discrimination on Basis of Disability for Programs Receiving Federal Financial Assistance
- 504 in Schools: Access to Programs, Provision of a Free Appropriate Public Education (FAPE), Prohibition of Discrimination

SECTION 504 PROHIBITS DISCRIMINATORY ACTIONS

- Section 504 states:

“No otherwise qualified individual with a disability...shall solely, by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance...”

WHY IS 504 IMPORTANT?

- Provides protections to children not eligible for services under the Individuals with Disabilities Education Act (IDEA)
- Requires individualized determinations
- Promotes inclusion
- Prevents inappropriate or over-identification in special education
- Protects children from disability-based discrimination and harassment

SECTION 504: SCHOOL FACILITIES AND ENROLLMENT PROCESSES

- A recipient of funds may not use criteria that have the effect of subjecting qualified persons with disabilities to discrimination
- In determining the site or location of a facility, a recipient may not make selections that have the effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance
- A recipient is not required to make each of its existing facilities or every part of a facility accessible to people with a disability; however, the recipient must operate its program so that when each part is viewed in its entirety, it is readily accessible to people with disabilities

SECTION 504: STUDENT ACCESS

- Section 504 requires schools to provide FAPE to qualified students who have a **physical or mental impairment** that substantially limits **one or more** major life activities.

PHYSICAL OR MENTAL IMPAIRMENT

- 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 or 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. 34 C.F.R. 104.3 (j)(2)(i)

MAJOR LIFE ACTIVITIES

- Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Additional examples provided in the 1990 ADA amendment are eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
- Exclusions: any student who is engaging in the illegal use of drugs

DETERMINING SUBSTANTIAL LIMITATION

- The determination of a substantial limitation must be made on a case-by-case basis.
- No one measure, formula, or scale should be used; instead, a group of knowledgeable persons should draw upon a variety of information in making the determination (34 C.F.R. 104.35 (c))
- As of 2009, “mitigating measures” (e.g. medication, medical supplies) may not be considered in the determination, with the exception of “ordinary glasses or contact lenses”
- An impairment is considered transitory if it has an actual or expected duration of 6 months or less

IDEA v. Section 504 Eligibility

- **IDEA Eligibility and Support**
 - a) Student has a qualifying disability
 - b) Because of that disability, the student needs special education
 - c) Individualized instruction is delivered via an IEP
- **Section 504 Eligibility and Support**
 - a) Student has a physical or mental impairment that substantially limits one or more major life activities
 - b) Because of that impairment, the student needs an accommodation
 - c) Individualized support is delivered via a 504 service plan
- **Practice Standard:** If a student needs both instructional and non-instructional accommodations, the IEP should be designed to include all necessary accommodations

504 Support Planning and Procedures

- Section 504 requires school districts to individually evaluate a student before classifying a student as having a disability or providing the student with special education (34 C.F.R. 104.35 (b))
- LEAs must establish standards for initial 504 evaluations and periodic re-evaluations of students who need or are believed to need special education or related services because of disability
- A school district may use the same process to evaluate the needs of students under Section 504 that they use for evaluation under IDEA. If they choose to adopt a separate process, the process must comply with requirements specified at 34 C.F.R. 104.35

504 EVALUATIONS

- LEAs must establish evaluation standards that:
 - Secure written parent consent
 - Ensure validity of tests and other measures, as well as their administration and interpretation
 - Ensure eligibility determinations draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior
 - Establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and
 - Ensure that decisions regarding eligibility and accommodations are made by a group of persons, including persons knowledgeable about the child and the meaning of the evaluation data
- LEAs must ensure periodic reevaluation

504 PROCEDURAL SAFEGUARDS

- LEAs must “establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure” (34 C.F.R. 104.36)
- Annual notice to families of enrolled students, and notice on new student application materials, are recommended

ENSURING 504 COMPLIANCE

- Review all application and enrollment procedures to ensure that questions related to disability status are not asked until AFTER a child is accepted (to support FAPE accommodations)
- Identify a Section 504 Coordinator
- Ensure that all community members are aware of Section 504 protections and the obligation to identify and evaluate students with disabilities and related procedural safeguards (annual training recommended)
- Adopt standardized policies, procedures, and forms to ensure consistency
- Develop a process for complaint resolution

Supporting 504 Compliance: OSSE's Next Steps

- Publication of 504 Policy FAQ Email Address managed by DSE 504 Coordinator
- Review of all Federal Grant Applications to Ensure Inclusion of Updated Annual Assurances
- Collaboration with PCSB and Charter LEA Stakeholders to Support Compliant Enrollment Application Forms and Process
- Development of 504 FAQs Based on LEA Feedback

Supporting 504 Compliance: OSSE's Next Steps, Continued

- Development of 504 Handbook with LEA Input, Including Model Forms
- Posting of 504 Model Forms on OSSE Website
- Development of SEA 504 Complaint Process
- Creation of 504 Resource Bank on OSSE Website
- Ongoing Training and Technical Assistance for Practitioners
- Development of State Discipline Regulations

Important Resources

- TITLE 34 EDUCATION, SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION, CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION, **PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE** <http://ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#S3>
- Protecting Students With Disabilities: **Frequently Asked Questions About Section 504 and the Education of Children with Disabilities** <http://www2.ed.gov/about/offices/list/ocr/504faq.html>
- OSSE Guidance Related to Prohibitions on Discrimination Against Children with Disabilities Issued March, 2009 <http://osse.dc.gov/publication/prohibitions-discrimination-against-children-disabilities-charter-school-application>
- OSSE 504 Email Address: osse.section504hotline@dc.gov