

## **BASIC REQUIREMENTS**

### **1. What is Section 504?**

Section 504 is that section of the Rehabilitation Act of 1973 which applies to persons with disabilities. Basically, it is a civil rights act which prohibits discrimination against individuals with physical or mental disabilities who attend public or private schools funded with public dollars. Section 504 is enforced by the U.S. Department of Education, Office of Civil Rights (OCR).

### **2. How does a student become eligible to receive services and protection under Section 504?**

To become eligible for services and protection under Section 504, a student must be determined, as a result of an evaluation, to have a *physical or mental impairment* that *substantially limits one or more major life activities*.

### **3. What is a physical or mental impairment?**

A physical or mental impairment is described as:

- any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following basic systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or
- any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities (34Code of Federal Regulations, Part 104.3).

### **4. What are “major life activities” ?**

Section 504 defines major life activities as “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”

### **5. When does an impairment “substantially limit a student’s major life activity”?**

Section 504 regulations do not define the word “substantially.” The Office of Civil Rights (OCR) directs school districts to make the decision of whether a particular impairment “substantially limits” a major life activity for a student on an individual basis. A physical or mental impairment does not constitute a disability for purposes of Section 504 unless its severity or educational impact is such that it results in a substantial limitation of one or more major life activities.

## **EVALUATION**

### **6. When should the district evaluate a student for a disability under Section 504?**

Occasions include but are not limited to:

- When a student is referred to the child study team for a special education evaluation, but is determined not eligible for services under the Individuals Disabilities Education Act (IDEA).
- When a student is referred to the child study team and it is determined that a special education evaluation is not warranted.
- When a student shows patterns of not benefiting from the instruction provided.
- When a student returns to school after a serious illness or injury.
- When the student exhibits a chronic health condition.

### **7. Do schools have to evaluate students who are referred under Section 504?**

Section 504 does not provide an absolute right to an evaluation on demand; if a school district rejects the parents' request based on its belief that the child is not eligible, it must inform the parents of their right to challenge the district's decision not to evaluate. OCR 19 IDELR 1127 (July 19, 1993)

### **8. Do schools have to formally evaluate students to determine if he/she is eligible for services under Section 504?**

Yes. Schools do have to evaluate students before determining their eligibility for services and before deciding which services are appropriate. As a general rule, Section 504 evaluation procedures are substantially similar to those set out in the IDEA regulations for special education; however, school districts may have a different evaluation process for Section 504 than they have for IDEA.

Section 504 requires that "information from a variety of sources be considered and documented prior to placement (aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior, and observations from parents, teachers, and school personnel).

### **9. Who is responsible for conducting the multidisciplinary assessment and determining eligibility for programs and/or services under Section 504?**

Section 504 regulations require that decisions regarding eligibility, programs, related services, and accommodations be made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

## **ELIGIBILITY DETERMINATION**

### **10. What qualifies a student for programs and services under Section 504?**

Eligibility for programs and/or services under Section 504 is based on an affirmative response with documentation to the following qualifying questions:

- Does the student have a physical or mental impairment?
- Does the impairment affect one or more of the major life activities?
- Does the impairment substantially limit a major life activity?

### **11. Is attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD) a recognized disability under Section 504?**

Yes. The Department of Education has acknowledged that ADD and ADHD are impairments that can be the basis of eligibility under either Section 504 or IDEA. The key to eligibility under 504 is whether the student's ADD or ADHD is sufficiently severe that it substantially limits a major life activity, e.g. learning.

### **12. Does a physician's diagnosis of ADD/ADHD automatically result in a student being eligible for Section 504?**

No. A physician's diagnosis alone does not automatically result in eligibility for programs or services under Section 504. A physician's diagnosis should be considered as one piece of the evidence when evaluating the child.

### **13. Is a student with a physical or mental impairment who was referred to the child study team, but found ineligible for special education under IDEA, automatically covered under Section 504?**

No, depending on the severity of his/her condition, a student with an impairment who does not meet the standards for eligibility under the IDEA may or may not fit within the Section 504 definition.

### **14. Can a parent elect to have a student with a disability who is eligible under the IDEA identified as covered under Section 504 only?**

No. Although a parent may wish to avoid having his/her child "labeled" as a special education recipient, the Office of Civil Rights (OCR) has stated in no uncertain terms that parents have no such flexibility. A rejection of the services offered under IDEA amounts to a rejection of services offered under Section 504. Conversely, it should be noted that

a district has no flexibility to opt to provide services and accommodations under Section 504 when the student is IDEA eligible.

**15. Is every student with a disability who is eligible under the IDEA also covered under Section 504?**

Yes. Students who are eligible for special education programs and related services under the IDEA meet the definition of eligibility under Section 504. IDEA eligible students are entitled to additional protections and services offered under Section 504, e.g., the right to accessible facilities.

**INDIVIDUAL ACCOMMODATION PLAN**

**16. Are IEPs required under Section 504?**

No. An IEP is not required; however, best practice dictates that the district produce a written document entitled “Section 504/ADA Individual Accommodation Plan” to memorialize the agreed services and accommodations.

**17. What types of modifications to regular education programs typically are appropriate under Section 504?**

The following types of classroom instruction modifications are among those currently in use:

- Modifications to pacing, such as extending time permitted for completion of assignments;
- Modifications to the classroom environment, such as preferential seating;
- Modifications to presentation of subject matter, such as emphasizing visual materials;
- Adjustments to grading, such as modifying the weight given to examinations;
- Adjustments to homework assignments, such as reducing written assignments;  
and
- Modifications to testing techniques, such as extending the time in which the test must be completed on classroom, district and state testing programs.

**18. Can students who are eligible for Section 504 receive related services, such as physical therapy?**

Yes. Schools must provide services to Section 504 eligible students. Whereas under the IDEA, a student must be eligible for special education programs and related services in order to receive physical therapy or occupational therapy.

**19. Can students who are eligible under Section 504, but not IDEA, be served in special education classrooms?**

As a matter of law, no; in practice, maybe. Section 504 does not explicitly condition entitlement to special education on IDEA eligibility. Regulatory and judicial guidance concerning the provision of special education under Section 504 is scant. There are no authoritative decisions reviewing whether a particular student was entitled to special education services under Section 504.

**20. Can a teacher refuse to provide a service that school district agrees to provide in a Section 504 Individual Accommodation Plan?**

No. Teachers who refuse to perform an accommodation may find themselves in the position of the defendant teacher in *Doe v. Withes*. A jury found the teacher liable for \$5,000 in compensatory damages and \$10,000 in punitive damages because he refused to provide oral testing for a student with a disability.