Section 504 of the Rehabilitation Act of 1973

Introduction

Section 504 of the Rehabilitation Act of 1973 is a federal law that protects qualified individuals from discrimination based on their disabilities. The nondiscrimination requirements in Section 504 apply to any employer or organization that receives financial assistance from any Federal department or agency. Hospitals, nursing homes, human service programs, mental health centers, and public schools are all examples of employers and organizations that must comply with Section 504.

Who is Protected from Discrimination?

Qualified Individuals with Disabilities

A qualified individual with a disability includes anyone 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.

“Major life activities” include walking, seeing, hearing, speaking, breathing, working, performing manual tasks, learning, and taking care of yourself. Impairments may still be deemed to substantially limit major life activities even if one takes medication or uses aids or devices to mitigate the effects.

Qualifying impairments include, but are not limited to, the following:

- Autism Spectrum Disorders
- Blindness (or other Visual Impairments)
- Cancer
- Cerebral Palsy
- Deafness (or other Hearing Impairments)
- Food allergies
- Mental Illness (or other Mental Impairments)
- Mobility Impairments
More specifically, a recipient of federal financial assistance may not, on the basis of a qualified individual's disability:

- deny the opportunity to participate in or benefit from federal funded programs, services, or other benefits;
- deny access to programs, services, benefits, or opportunities to participate as a result of physical barriers; or
- deny employment opportunities—including hiring, promotion, training, and fringe benefits—which they are otherwise qualified for or entitled to.

**Section 504 with Respect to Students with Disabilities**

Section 504 requires that a school district provide a “free appropriate public education” (FAPE) to each qualified person with a disability within that district’s jurisdiction. School districts must provide a FAPE regardless of the severity or nature of the disability. Public schools must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. The United States Department of Education enforces Section 504 in public school districts.

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 person with disabilities; or
- of an age during which persons without disabilities are provided such services; or
- entitled to receive a FAPE under the Individuals with Disabilities Education Act (IDEA) (For more information on the IDEA, visit [http://idea.ed.gov](http://idea.ed.gov)).

An appropriate education may include education in the regular classroom, education in the regular classroom with the assistance of related aids and services, or special education and related services in a separate classroom for all or part of the school day. The Department of Education defines a FAPE in the following manner:

- 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 must occur with nondisabled students to the maximum extent appropriate according 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
- Established due process procedures that enable parents and guardians to receive required notices, review their child’s records, and challenge identification, evaluation, and placement decisions.

Students with disabilities must be placed in the same setting as their nondisabled peers to the maximum extent appropriate according to the education needs of the students.
with disabilities. They must also be allowed to participate with nondisabled peers in academic and nonacademic services—such as meals, recess, and physical education—to the maximum extent appropriate.

Specific aids and services must be provided to students with disabilities as is appropriate to ensure that the student receives a FAPE. Appropriate supplementary aids may include interpreters for deaf students, readers for blind students, and door-to-door transportation for students with mobility impairments.

**Section 504 with Respect to Students with Temporary Impairments**

Section 504 does not normally cover temporary impairments, which do not typically constitute disabilities under the Rehabilitation Act. However, a temporary impairment can be considered a disability if it results in a substantial limitation of one or more major life activities for an extended period of time. Whether the limitation is substantial or not is determined on a case-by-case basis: the school district considers both the actual (or expected) duration of the impairment and the extent to which it actually limits a major life activity. An impairment that is episodic or in remission can also qualify as a disability, but only if it would substantially limit a major life activity if it were active. Such qualifying temporary impairments would entitle the student to a FAPE under Section 504.

In the Amendments Act, Congress clarified that a mere “transitory impairment” does not qualify an individual for Section 504 services. A transitory impairment exists when the individual’s disability is “transitory and minor” and has an actual or expected duration of 6 months or less.

**Evaluation and Placement Decisions for Students with Disabilities**

**Basic Information**

The school district must conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related aids and services. A parent or guardian can request an evaluation by writing directly to the superintendent of the school district. A student may also be referred by a teacher, other school employee, or a community agency for consideration. In the event that the parent or guardian does not request the evaluation, the district must receive the parent or guardian’s consent before evaluating.

Upon receipt of the request, the school district must arrange and conduct the individual evaluation at no cost to the parents. The district must create a multi-disciplinary committee to conduct the evaluation. Complying with the IDEA’s requirements for who should be part of the evaluation committee is sufficient for Section 504 but is not required. The evaluation occurs before determining the student’s future placement and before any significant change in the student’s previous placement. In accordance with the IDEA, reevaluation must occur at least every three years (unless the parent and school district agree reevaluation is not necessary). The school district can use the same evaluation process for 504 plans as for an Individualized Education Program (IEP) but is not required to do so.
Federally Imposed Requirements

School districts are required to evaluate every child residing within their jurisdictions between the ages of 3 and 21 who is suspected of having a disability. They also must establish standards and procedures for evaluations and placement decisions. These procedures must ensure that any administered tests and other evaluation materials:

- have been validated for the specific purpose for which they are used, and are administered by trained personnel in compliance with the instructions provided by the producer of those tests and materials;
- are tailored to analyze specific educational areas of need, rather than merely providing a single general intelligence quotient; and
- are selected and administered so as to best 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 impairment(s) or skill(s) (unless the test is designed to measure those impairments or skills).

Evaluators must also take into account a wide variety of sources and factors when evaluating the student and determining his/her placement. Such sources and factors include—but are not limited to:

- Aptitude and achievement tests;
- Teacher recommendations;
- Physical condition;
- Social and cultural background;
- Adaptive behavior (the student’s ability to exercise personal independence and social responsibility as expected of a nondisabled student of his/her age or cultural group).

Schools districts cannot consider the ameliorating effects of any mitigating measures that the student is using to determine whether a student has a physical or mental impairment that substantially limits that student in a major life activity.

The School District’s Obligations upon Receiving a Request for an Evaluation

A school district violates Section 504 if it does not evaluate a student in all areas of his/her suspected disability. It also violates Section 504 if it fails to address all the ways in which the student’s disability affects his educational performance in a Section 504 plan or IEP. School districts cannot decide that a student is not disabled without evaluating him/her or giving the parent(s) or guardian notice of their due process rights. For more information on evaluations more generally, see the Equip for Equality Fact Sheet titled “Evaluations for Special Education Services.”
School Districts’ Responsibility to Evaluate Students with Disabilities in Private Schools

School districts are required to evaluate parentally-placed private school students, which includes home schooled students in Illinois. The obligations outlined in the IDEA can be shared between different agencies, even across state lines. For example, in *District of Columbia v. Abramson*, the District of Columbia believed that a private school in Connecticut was solely responsible for evaluating a teenager's eligibility for services. The court found that the District of Columbia had violated the teenager’s right to a FAPE by refusing to evaluate him.

However, you may request that the district where the private school is located (if your home district is different) identify if your child needs special education services.

Enforcing Accommodations for Students with Disabilities through Section 504 Plans

If the evaluation indicates that a student is eligible for special education or related aids and services, the child can receive a Section 504 plan (which covers both physical and mental disabilities). A 504 plan lists the modifications and accommodations that the student needs to perform at the same level as his/her peers. Section 504 provides a series of procedural safeguards, including:

- Notice to the parents about any activity regarding the plan and their due process rights;
- An opportunity for the parents or guardian to examine relevant records;
- An impartial hearing with an opportunity for participation by the parents or guardian and representation by counsel; and
- A review procedure.

When a student is found to be entitled to accommodations under Section 504, the school normally must put those accommodations into the student’s 504 plan. It is possible that a student with a disability that does not require special education services can still receive services under Section 504.

Accommodations and Modifications in a 504 Plan

After a student is deemed to have a disability and you request a formal 504 plan, the school district must convene a Section 504 Team to develop a plan describing the student’s disability and the necessary regular or special education and/or related aids and services. The plan specifies how the special education and/or related aids and services will be provided to the student and by whom. The plan also identifies the person who will be in charge of ensuring that the entire plan is implemented. General education teachers must also comply with the 504 plan’s requirements.

Informal versus 504 Plan Accommodations and Modifications

There is a strict division between ‘informal’ accommodations and the provisions listed in a 504 plan. When a school district either does not believe or is uncertain as to whether a student needs special education or related aids and services, the district is often
permitted to remedy the student's educational needs through informal means in the regular education environment (without an evaluation and eligibility determination under Section 504). Such informal accommodations are only permitted if the district acts reasonably in prescribing, implementing and evaluating strategies to address the student's needs.

Once the district determines or reasonably should determine that the student—because of a physical or mental disability—needs or is likely to need special education or related aids and services, the district must initiate an evaluation and determine the student's eligibility under Section 504. You are not obligated to participate in any process to provide informal accommodations. The school district cannot force you to accept informal substitutes for the official, procedural safeguards outlined in Section 504.

There are two exceptions to these general rules. The school does not need to provide reasonable modifications or accommodations if it can show that:

- providing those modifications or accommodations would fundamentally alter the nature of the services; or
- providing those modifications or accommodations causes undue hardship on the school system.

Whether the accommodation imposes an undue hardship depends on the particular student and school.

**School Districts’ Responsibilities toward Transferring Students with 504 Plans**

In the event that a student with a 504 plan transfers to a different school district, you should request that the receiving district review the plan and all supporting documentation. The receiving district must implement the plan if a group of people at the school (including people with expert knowledge about the evaluation data and placement options) believe that the plan is appropriate. If the district decides the plan is inappropriate, it must reevaluate the student in accordance with the aforementioned Section 504 procedures.
DO YOU HAVE A QUESTION?
Contact Equip for Equality’s Special Education Clinic Helpline
1-866-KIDS-046 (voice) or 800-610-02779 (TTY)
SpecialED@equipforequality.org
www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Special Education Helpline seeks to empower parents to advocate effectively. The Special Education Clinic, Helpline, and these publications were made possible by grants from the Chicago Bar Foundation, The Field Foundation, Illinois Bar Foundation, Illinois Equal Justice Foundation, Polk Bros Foundation, and the State of Illinois Department of Human Services. The contents of this publication are the sole responsibility of the authors and do not represent the official views of the grantors.

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