



**Updates on Section 504:
*Leveling the Playing Field for
Students with Disabilities***


Candace Cortiella
Director
The Advocacy Institute



Today's Agenda

- **Background**
- **Eligibility under IDEA and 504**
- **Impact of ADAAA**
- **Key obligations of school districts**
- **Emerging Issues**

ENACTMENT OF FEDERAL DISABILITY LAWS



NOTE: 504 regulations were released in 1978, five years after enactment.

**Public Law 93-112
The Rehabilitation Act of 1973**

Civil rights legislation designed to ensure non-discrimination on the grounds of disabling conditions ...served as basis for Americans with Disabilities Act of 1990, amended in 2008

"No otherwise qualified handicapped individual...shall, solely by reason of handicap, 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."

Eligibility under IDEA

- Has a disability that meets one of several enumerated definitions—very specific
- By reason thereof requires special education and related services
- If student does not need special education, he or she is not eligible

Eligibility under Section 504

- Has a mental or physical impairment
 - Which substantially limits a major life activity
 - Has a record of such impairment, or
 - Is regarded by others as having an impairment
- Needs regular **or** special education and related aids and services
- Therefore, needed accommodations to regular education program are sufficient

All students eligible for special education services under the IDEA are also covered by Section 504. However, not all students eligible under Section 504 are eligible under IDEA.

Section 504 only

IDEA and Section 504

IMPORTANT: If a school determines that a student with a disability is not eligible for services under the IDEA, it must have a process in place to determine whether the student is covered by section 504.


ADA Amendments Act Implications

- Applies to Section 504 (conforming amendment)
- The definition of disability should be interpreted **broadly**
- Adds several examples to list of “major life activities” such as **walking, reading, bending and communicating** (non-exhaustive)

ADA Amendments Act Implications

- Other than ordinary eye glasses or contact lenses, “**mitigating measures**” will not be considered when determining whether a person has a disability
- Measurement for impairments that are episodic or in remission must be considered at the time they are active.

OCR FAQ on the ADA




*Protecting Students
With Disabilities
Frequently Asked Questions
About Section 504 and the
Education of Children with
Disabilities*

<http://www.ed.gov/about/offices/list/ocr/504faq.html>

OCR FAQ on the ADA

- Examples of mitigating measures can include such things as medication, medical supplies, assistive technology, and "learned behavioral or adaptive neurological adaptations"
- Eligibility based on temporary impairments are to be considered on a case-by-case basis, considering the expected duration of the impairment and the extent to which it actually limits a major life activity

**OCR Dear Colleague Letter
on 504 & ADA (January 2012)**



"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)"

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.pdf>

LEA Obligations under 504

Districts must:

- "undertake to identify and locate all unserved" students with disabilities, (child find).
- conduct timely evaluation
- determine eligibility via team
- student's needs and the services to be provided must be specifically identified, in writing, but there is no requirement for an IEP

LEA Obligations under 504

- Determination that a student is no longer eligible for Section 504 services is a significant change in placement and requires re-evaluation
- Districts must have procedures for due process (hearing)
- Formal complaints are filed w/ Office for Civil Rights
- Independent evaluation at school expense (IEE)?

LEA Obligations under 504

Discipline

- Prevention
- Intervention (BIP)
- Long term suspensions (or pattern of...)
- Manifestation determination

LEA Obligations under 504

Nonacademic and extracurricular activities

School districts must provide nonacademic and extracurricular activities so as to afford students with disabilities an equal opportunity to participate with students who do not have disabilities to the maximum extent appropriate ...

Such activities may include "counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students.



Emerging Issues

- Perry Zirkel reasons that not all eligible students need a plan.
- Denial of consent or revocation of consent for services under the IDEA
- *Letter to McKethan* (OCR, 1996)

Resources




Understanding the Americans with Disabilities Act Amendments Act and Section 504 of the Rehabilitation Act

*Candace Cortiella
Director, The Advocacy Institute
Laura Kaloi, MPA
Public Policy Director
National Center for Learning Disabilities*

Available at www.LD.org




Resources

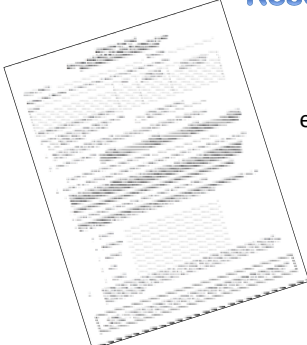


OBLIGATIONS OF SCHOOL DISTRICTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 WITH UPDATES ON THE ADA AMENDMENTS ACT

Ronald M. Hager
National Disability Rights Network



Resources



Sample student eligibility form with ADA changes.

Resources

Civil Rights Data Collection (CRDC)
<http://ocrdata.ed.gov/>

Data from approximately 7,000 school districts, includes both school-level and district-level data.

Disaggregated data for disability (Individuals with Disabilities Education Act (IDEA) and **Section 504 only.**)

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SECTION 504/ADA STUDENT ELIGIBILITY FORM*

(SHADED AREAS DENOTE CHANGES DUE TO ADAA 1/1/09)

Child's Name: _____ Birthdate: _____

Eligibility Team Members: Fill in names and check areas of knowledge for each team members:

| Names: | ...child | ...meaning of evaluation data | ...accommodations/ placement options |
|--|----------|-------------------------------|--------------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| Note: Make sure there is at least one check in each column | | | |

Sources of evaluation information (check each one used):

aptitude and/or achievement tests teacher recommendations
 adaptive behavior others(specify): _____

1. Specify the mental or physical *impairment* _____
 (as recognized in *DSM-IV* or other respected source if not excluded under 504/ADA, e.g., illegal drug use)

2. Check the *major life activity*:

| | | | |
|--|--|--|-----------------------------------|
| <input type="checkbox"/> seeing | <input type="checkbox"/> hearing | <input type="checkbox"/> walking | <input type="checkbox"/> learning |
| <input type="checkbox"/> reading | <input type="checkbox"/> thinking | <input type="checkbox"/> concentrating | <input type="checkbox"/> sleeping |
| <input type="checkbox"/> bowel functions | <input type="checkbox"/> bladder functions | <input type="checkbox"/> digestive functions | <input type="checkbox"/> eating |

or specify alternative of equivalent scope and importance: _____

3. Place an "X" on the following scale to indicate the specific degree that the impairment (in #1) limits the major life activity (in #2):

- Make an educated estimate **without** the effects of mitigating measures, such as medication; low-vision devices (except eyeglasses or contact lenses); hearing aids and cochlear implants; mobility devices, prosthetics, assistive technology; learned behavioral or adaptive neurological modifications; and reasonable accommodations or auxiliary aids/services.
- Similarly, for impairments that are episodic or in remission, make the determination for the time they are active.
- Use the average student in the general (i.e., national) population as the frame of reference.
- Interpret close calls in favor of broad coverage (i.e., construing Items 1-3 to the maximum extent that they permit). Thus, for an "X" at 4.0 or below, fill in specific information evaluated by the team that justifies the rating:

- | | | |
|---|----------------------|-------|
| 5 | Extremely | _____ |
| | | _____ |
| 4 | Substantially | _____ |
| | | _____ |
| 3 | Moderately | _____ |
| | | _____ |
| 2 | Mildly | _____ |
| | | _____ |
| 1 | Negligibly | _____ |

4. If the team's determination for #3 was less than "4," provide notice to the parents of their procedural rights, including an impartial hearing. If the team's determination was a "4" or, above, the team should determine and list on the 504/ADA Plan the specific accommodations that are necessary for the child to have an opportunity commensurate with nondisabled students (of the same age).

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