

Section 504 of the Rehabilitation Act of 1973

A Fact Sheet from the Minnesota Disability Law Center

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1. What is Section (§) 504?

The Congress first passed § 504 as part of the Rehabilitation Act of 1973. It prohibits discrimination on the basis of disability in any program or activity which receives federal money.¹ The Rehabilitation Act was essentially the first non-discrimination statute designed to protect persons with disabilities.

In December 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA) to restate congressional intent in response to certain US Supreme Court decisions that narrowed the original law. These changes also effect interpretations of § 504 and will be noted below.

2. What is the difference between § 504 and IDEA?

Students with § 504 plans are students with disabilities who may require accommodations in the classroom (such as textbooks written in Braille or a scribe to write a student's responses on an exam) or related services such as physical therapy. They do not require the same degree of special education services as envisioned

under Individuals with Disabilities Education Act (IDEA). For example, a student with paraplegia but no other substantial limitations would probably fall under § 504 because she does not have any special education needs that would require curriculum modifications or other forms of individualized instruction. She would require accessible facilities and other related services, but she does not need specialized instruction as required for IDEA special education students.

3. Can a student qualify under both IDEA and § 504?

Yes. All students who receive special education services and have an Individualized Education Plan (IEP) are automatically considered eligible under § 504. A separate accommodation plan is not necessary because accommodations are addressed in the IEP. A student may, however, be eligible under § 504 and not qualify for or have need of special education services.

4. How does a student qualify under § 504?

To be considered a § 504-only student, a student must be “otherwise qualified” and “disabled.”

5. What does “otherwise qualified” mean?

“Otherwise qualified” means qualified to attend public school. In Minnesota, any child is qualified to attend public school if s/he is 5-21 years of age and is a resident of the school district.² Very young children, ages 0-5 can attend public school if they are eligible for special education services. Children eligible for special education are likely also eligible for § 504 protections.

6. What does “disabled” mean?

Under § 504, a student is considered disabled if he or she:

- has a physical or mental impairment which substantially limits a major life activity,
- has a record of such an impairment, or
- is regarded as having such an impairment.³

A “major life activity” is any daily activity that people can usually perform with little or no difficulty⁴ such as breathing, walking, seeing, or learning. The recent ADA changes increased the list to include eating, sleeping, walking, standing, lifting, bending, reading, concentrating, thinking, and communicating. The ADA changes also clarified that the list was only a sample or non-exhaustive list. A student is considered substantially limited in a major life activity if s/he is unable to perform the activity or if s/he is significantly restricted in performing that activity.⁵

The ADA changes also clarified that the term substantial limitation is to be broadly and inclusively interpreted in seeing if

children and others are eligible for §504 protections.

A student with a temporary disability (such as a broken leg or extended illness) may be considered disabled under § 504 depending on the nature, severity, and duration of the disability.⁶ IDEA specifically excludes children with temporary disabilities. Students with temporary disabilities must be examined on a case-by-case basis to determine whether § 504 applies.

7. What rights and protections does § 504 give to students with actual disabilities?

Under § 504, qualified students are entitled to a free appropriate public education (FAPE).⁷ A FAPE consists of an education that is:

- provided at no cost to parents,
- designed to provide educational benefit to children and is appropriate for their level of disability, and
- is provided in an environment that offers the greatest exposure to non-disabled peers.

This means that students must be provided with the means to succeed in the classroom and to participate in school activities, including extracurricular activities, with their fellow classmates. Section 504 presumes that the most appropriate placement for a student with a § 504 plan is in a regular classroom with non-disabled students (otherwise known as mainstreaming or inclusion).

These students are protected from discrimination and exclusion from school-based programs on the basis of their disabilities.

8. What rights do students have under the second and third prongs of § 504's definition of disability?

A student who has a record of a disability or is perceived by others as having a disability is regarded somewhat differently under § 504. These are students who do not have an actual impairment, and therefore do not require the educational services that are mandated by § 504. Section 504 does, however, protect these students from discrimination based upon their prior or perceived disabilities. For example, a school cannot place a child in a separate classroom because they suspect the child may be HIV-positive. Schools are not required to provide § 504-related services to students in these categories because they are not actually disabled.

9. How does a school determine what services should be provided to a § 504-only student?

The school district identifies someone who is disabled and may require reasonable accommodations. Once a student has been so identified, a § 504 committee evaluates him/her. The evaluation should lead to the types of services that are necessary to accommodate the disability.

10. Who are the members of the § 504 committee?

Section 504 does not specify who should sit on a § 504 committee, but it does say that it should include persons knowledgeable about the child.⁸ Section 504 committees are not required to include parents, but most schools do as a standard practice.

11. What does the § 504 committee do?

The committee is responsible for determining what services and accommodations the child shall receive.

The result of the committee's deliberations is a document similar to an IEP, but is usually referred to as an accommodation plan. When developing this plan, the committee is required to consider information from a variety of sources including aptitude tests, teacher recommendations, the student's physical condition, cultural and social background, and adaptive behavior.⁹

Schools are required to review a student's accommodation plan at least once every three years.

12. Does § 504 include the accessibility of school buildings?

Yes. Section 504 requires school buildings to be accessible to persons with disabilities. The physical age of the building will determine the degree of accessibility. Schools constructed before 1977 are not required to make every part of the school accessible as long as the services are accessible. For example, a school may have to switch classes to a part of the school that is more readily accessible. For buildings constructed after 1977, every physical part of the school must be accessible, including playgrounds and gyms.

13. Does § 504 include extracurricular activities?

Yes. Students with disabilities cannot be automatically excluded from participating in school-sponsored extracurricular activities. Students with disabilities must have an equal opportunity to participate in these activities. This does not mean that they must be included in an activity. A student must be able to satisfy the performance/academic prerequisites of the specific activity in order to participate. For example, a student with a visual impairment may not be able to play wide receiver on the football team, but he

must be given the opportunity to try out and be compared on an equal basis to the other students. Students who do otherwise qualify for an activity must be given necessary accommodations to facilitate their participation (sign language interpreters, transportation, etc.).

14. What are some examples of when a § 504 plan should be considered?

- When a student has a chronic health condition.
- When a disability or medical condition of any kind is known or suspected.
- When a student is returning to school after a serious injury or long illness.
- When retention is being considered.
- When a student has been evaluated for special education and did not qualify.
- When a student is failing classes, frequently suspended or at risk of dropping out.

Again, the ADAAA changes also clarified that the term substantial limitation is to be broadly and inclusively interpreted in seeing if children and others are eligible for §504 protections and services.

15. What are some examples of accommodations that can be included in a § 504 plan?

Some examples might be: allowing more time to pass in the hallways, to complete assignments, to take tests, or to individualize classroom or homework assignments. The § 504 plan might include: dispensing medication, special diets, early dismissal for appointments or a change in allowable absences for health reasons. *See*, additional

fact sheet entitled *Modifications, Supplemental Aids and Services*.

16. Are there required forms to complete for a § 504 plan?

Many districts have forms they use for this purpose. There is no specifically required form. The important part to remember is that the § 504 plan, no matter what form, describes in writing and in detail the accommodation necessary for the student to have access and participate in the same programs that are available to students without disabilities.

17. What do I do if I believe my child needs a § 504 accommodation plan?

Write a letter or talk to the building principal requesting a meeting to discuss the need for a § 504 plan. The § 504 committee will meet and discuss any needs for evaluation. Based on that information and any information you provide to the school, the committee could develop a § 504 plan.

18. What if the principal doesn't know about § 504 plans or refuses my request for a § 504 plan?

If the principal is unfamiliar with § 504, share this handout with him. In addition, each district (that employs 15 or more persons) must have a person designated as a § 504 coordinator.¹⁰ Ask the principal to find out who that person is and to contact them to be involved with developing your child's § 504 plan. (It is a good idea for you to know who this district person is, should you have questions or problems with the § 504 plan.)

If the principal refuses your request for a § 504 plan, ask him to put his refusal in writing to you. Once you receive the letter, contact an advocacy organization for further

direction on your legal rights or proceed with the grievance or complaint procedures described below.

19. What if my child has a § 504 plan and the district or a particular teacher refuses to follow it?

You have a right to file a grievance complaint with the local district using their grievance procedures, or file a complaint with the Office of Civil Rights (OCR) as described below.

20. What are my options if I believe that my child has been discriminated against by the school district because of his disability?

School districts that employ more than 15 persons must have grievance procedures to resolve complaints of discrimination.¹¹ You can request a copy of this grievance procedure and follow the complaint process; or you can file a complaint directly with the U.S. Department of Education Office for Civil Rights (OCR). OCR has an on-line complaint form that is available at:

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

You may also contact the regional office by phone or mail.

The address and phone number are:

Office of Civil Rights, Region V
U.S. Department of Education
111 North Canal, Room 1053
Chicago, Illinois 60606
Phone: 312/886-8434
TTY: 312/353-2540.

21. What information do I need to include in a letter of complaint to the Office of Civil Rights?

- Your name, address and phone number;

- How you believe you or your child have been subject to discrimination. You must describe in detail the information on which you are basing your allegations of discrimination;
- The name of the person(s) affected by the discrimination;
- A list of the specific dates and situations, describing the discrimination;
- Any supporting information; and
- You must sign the letter and send the original. Be sure to keep a copy for yourself.

22. What are the timelines for filing a complaint with OCR?

You must file a discrimination complaint within 180 days of the discrimination.¹² However, in certain limited cases a waiver of the 180-day period may be granted. If you have not filed in a timely manner, OCR will notify you and give you an opportunity to request a waiver. Some of the reasons allowed for waivers might include the following:

- That you could not or did not know the situation was discriminatory,
- That you were unable to file due to illness or incapacitation, and you filed within 60 days after you became well;
- You filed a complaint with another agency and their investigation went over the 180-day timeline.

23. What happens after OCR receives my complaint?

OCR will contact you within 15 days of receiving your complaint. OCR may take up to 45 days to review your complaint and may ask for additional information.

Usually, OCR will contact you and ask if you are willing to attempt an “early complaint resolution.” If you agree, an OCR staff person will act as a negotiator between you and the district. OCR will put the final negotiated settlement into a written “resolution agreement” which both parties sign. With this process, in exchange for whatever the district agrees to do, you agree to withdraw your complaint as resolved. If the district fails to follow the agreement, you have a right to file a new complaint with OCR. OCR will investigate the new allegations but not the alleged breach of the resolution agreement.

attempt to resolve your complaint without a formal investigation and without issuing findings. OCR will ask the district if it is willing to enter into a “resolution for Corrective Action.” This is an agreement between the district and OCR, not an agreement between you and the district. If the district refuses to enter into a corrective action resolution with OCR, then OCR may conduct a formal investigation and issue findings. If the school district does not comply with an OCR corrective action resolution, it can be enforced through private legal action.

If you choose not to agree with the informal resolution process, OCR will continue to

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Endnotes

¹29 U.S.C. § 794(a) (1999) (providing that “No otherwise qualified individual with a disability in the United States. . . 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”).

²See MINN. STAT. § 120A.20, Subd. 1 (1999).

³See 34 C.F.R. § 104.3(j) (1999).

⁴See 29 C.F.R. § 1630.2(i) (1999). Section 504 does not specifically define “major life activity,” but many schools borrow the definition contained in the Americans with Disabilities Act.

⁵See 29 C.F.R. §§ 1630.2(j)(1)(i), 1630.2(j)(1)(ii). Once again, § 504 does not define “substantially limits.” The above definition is borrowed from the ADA.

⁶See *Ventura (CA) Unified School District*, 17 EHLR 854 (OCR 1991).

⁷See 34 C.F.R. § 104.33(a).

⁸See 34 C.F.R. § 104.35(c)(3).

⁹See 34 C.F.R. § 104.35(c)(1).

¹⁰34 C.F.R. § 104.7(a).

¹¹34 C.F.R. § 104.7(b).

¹²34 C.F.R. § 100.7(b).