



Frontline Foundations Webinar: Section 504 Back to Basics

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The Basics: What is Section 504?

- Section 504 is a provision in the Rehabilitation Act of 1973. We refer to this paragraph in the law as Section 504.
 - “No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

The Basics: Key Provisions

- On the basis of disability and with respect to the school district's programs and activities:
 - Don't exclude from participation.
 - Is the child prevented from enrolling because of disability?
 - Is the child expelled for behavior related to disability?
 - Don't deny benefit
 - Is disability interfering with the student's opportunity to benefit?
 - Don't discriminate
 - Is the student prevented from trying out for the school play because of disability?
- This is the language of civil rights. The protected class is made up of qualified individuals with a disability.
- Note the inherent comparison of treatment of students with disabilities (the protected class) to students outside the protected class (nondisabled students).
 - Example: Since the average nondisabled student is responsible for all grade-level curriculum, so too is the 504-eligible student.

The Basics: Section 504 is not IDEIA

- Unlike Section 504, IDEIA was created specifically to address the needs of students with disabilities.
 - “The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the **benefits obtainable by children at one end of the spectrum will differ dramatically** from those obtainable by children at the other end, with infinite variations in between.” *Board of Education v. Rowley*, 553 IDELR 656 (S.Ct. 1982).

The Basics: Section 504 is not IDEIA

- Unlike Section 504, IDEIA was created specifically to address the needs of students with disabilities.
 - **“One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills.** We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act.” *Id.*

The Basics: Section 504 is not IDEIA

- Unlike Section 504, IDEIA was created specifically to address the needs of students with disabilities.
 - A major concern to Congress was the lack of specialized personnel to evaluate and serve disabled students, the financial burdens on families seeking those services (and the dearth of options for families that lacked the resources to find and procure such services).
 - The promise of federal funds was used to enlist states to provide these expensive and sometimes rare services in local school districts
- The IDEIA or special education is focused on a subset of students with disabilities
 - IDEIA-eligible students require “specially designed instruction”
 - IDEIA-eligible students are typically more disabled or more complexly disabled than their 504 peers (hence the need for more complex evaluation and specialized services).

The Basics: Section 504 is not IDEIA

- The IDEIA-eligible student:
 - Is more impaired or complexly impaired than the typical 504 peer
 - Needs more intensive or specialized educational services than the the typical 504 peer.
 - Has a more valuable FAPE than the 504 peer.
 - May receive less than total access to grade level curriculum if necessary to receive FAPE (note the difference with 504's civil rights approach)
 - Has parents with more extensive parent rights than a parent of a 504 peer.

The Basics: Section 504 is not IDEIA

- The IDEIA-eligible student (continued):
 - Has all of the rights of a regular education student, a 504 student and an IDEIA student.
 - Longstanding OCR guidance envisions all IDEA-eligible students as protected by the nondiscrimination rules of Section 504. *Letter to Mentink*, 19 IDELR 1127 (OCR 1993).
 - Although eligible for both IEP and 504 Plan, the IDEIA-eligible student gets an IEP. *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Educ. of Children with Disabilities*, 123 LRP 33181 (OCR 07/18/23) (Question 35).

The Basics: Section 504, ADA, IDEIA... it gets confusing

- Why are there three federal laws on disability in the public schools? Historical accident.
- How to tell them apart?
 - For our purposes the ADA and Section 504 are sister civil rights approaches. Focus on 504 and recognize that the ADA adds a few extra pieces (for example the ADA's Effective Communication regulations, ADA service animal regulations by Department of Justice), but lacks the 504 FAPE process.
 - IDEIA, a funding statute, provides FAPE for students who are more disabled or more complexly disabled than their 504 peers and therefore have need of specially designed instruction.

The Basics: Outdated Regs from 1977 + Years of OCR Guidance Documents and Letters Create Confusion

- The Section 504 regulations created in 1977 have not changed despite passage of a sister-statute, the ADA in 1990, which was amended in the 2008 ADAAMA.
 - The 504 regulations are but a few pages leaving many questions unanswered.
 - Over the years OCR has released lengthy guidance letters rather than regulations to fill in the blanks.
 - Regional offices of OCR have for years created a confusing patchwork of letters of finding
 - **OCR sometimes borrows from IDEIA.** Example: OCR by Letter of Finding requires parental consent prior to initial evaluation (not required by 504 regs, but explicit in IDEIA).
 - **OCR sometimes sometimes takes positions contrary to those in special ed.** Example: OCR by Letter of Finding places the evaluation responsibility on the school district where the student resides as opposed to the district where the private school is located.
- A proposed update to the 504 regulations that could clarify many issues was promised last year.... we're still waiting. For now, focus on compliance with what is in place.

Roles and Responsibilities

- §504 committees of knowledgeable persons must include persons with knowledge of the child, data, and 504 plan options (34 CFR §104.35(c)(3).
- No specifically required personnel—should vary depending on student situation.
- Office for Civil Rights (OCR) encourages participation of campus administrators.
- Role of participants in team decision-making
- Collaboration with parents—consideration of parent input

Roles and Responsibilities

- 504 coordinators at meetings? Only likely in very small districts, otherwise it is likely 504 campus designees would attend.
- Teachers? Usually participate in meetings, report on student needs in classroom, recommend accommodations, help draft accommodations in plan .
- At the present time, parents are not *required* members, although most districts invite parents to meetings.

As the USDOE revises the 504 regulations, they may add the parent as a required member of 504 committees (stand by for proposed regulations).

Roles and Responsibilities

- A collaborative decision-making process led by educators, with consideration of parent input, and parent rights to challenge committee decision (local grievance, 504 impartial due process hearing).

Identifying & Evaluating Students Under 504

- An Affirmative Duty to Child Find
 - The duty does not depend on parent request for evaluation. *West Contra Costa (CA) Unified School District*, 42 IDELR 121 (OCR 2004) (“The District had this obligation under Section 504 whether or not the parent made a request for an assessment.”)
 - The school’s duty to evaluate under Section 504 is triggered by the school’s suspicion that the student is disabled and in need of services. 34 CFR §104.35(a).
- The Parent can request a 504 evaluation at any time.

Identifying & Evaluating Students Under 504

- In Section 504, “evaluation” does not necessarily mean “test” or “assessment.”
 - The Section 504 Committee conducts the evaluation. In 504, “evaluation” refers to a “gathering of data” or a “drawing together” of data from a variety of sources so that the committee can make the required determinations. §104.35(c)(1).
 - the District is required to “draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.”
 - Information obtained from all such sources is to be documented and carefully considered. §104.35(c)(1)&(2).
- Formal assessment is not required unless the Committee thinks it needs such assessment to determine eligibility and services.
 - The same is true for medical data and medical diagnosis.
 - If required by the Committee, an assessment, medical data or a medical diagnosis must be secured at no cost to parent.

Identifying & Evaluating Students Under 504

- 504 Eligibility requires a person to be both qualified and handicapped.
 - “Qualified” in the K-12 context boils down to being of an age served by the school and living within the boundaries of the school (or eligible to attend due to transfer, open enrollment, son/daughter of employee, etc.)
 - “Handicapped persons means any person who: (i) has a physical or mental impairment which substantially limits one or more major life activities.... 34 CFR §104.3(j)(1),

Identifying & Evaluating Students Under 504

- “Handicapped persons means any person who has
 - **a physical or mental impairment** (Causation)
 - Distracted due to ADHD or from sitting next to best friend?
 - No list of impairments due to concern over possible omission.
 - Impairment need not be severe or permanent
 - Medical diagnosis not required unless Committee wants one and secures it at no cost to parent.
 - **which substantially limits** (How much impact on MLA?)
 - We’re all impaired... but we’re not all substantially limited by impairment.
 - ADA’s thoughts on “significant restriction” as too high a standard
 - ADA on mitigating measures.
 - **one or more major life activities** (Area of life where impairment interferes)
 - MLAs include: “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” ADA added: “eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.” ADA also added major bodily functions. EEOC includes “interacting with others” as well.

Identifying & Evaluating Students Under 504

- Note a student does not have to demonstrate a need for services in order to be 504 eligible. *Letter to Memphis, 54 IDELR 61 (OCR 2009)*.
 - Since 2008, OCR has opined that eligibility and need for services are separate inquiries.
- If the student is eligible, the Committee then determines whether a 504 Plan is necessary and if so, what it should include.

Developing and Implementing 504 Plans

- **Purpose of plans**—equal opportunity to access educational program and regular curriculum, not maximization of potential or assurance of success
- 504 plans are developed from an understanding of the child's unique disability-related needs, in turn based on the evaluation data (various sources of relevant information).
- Accommodations and modifications included in plan are those needed for FAPE (equal educational opportunity).

Terminology issue—Accommodation vs. modification, no modification of underlying regular curriculum content under §504.

Developing and Implementing 504 Plans

- **Services**—Counseling, health services, transportation, and the potential for more intensive related services such as OT or PT
- **Functional behavioral assessments (FBAs) and behavior intervention plans (BIPs)**—Required in cases of behaviors related to disability, particularly if they impede learning of student or others (see July 2022 OCR Discipline Guidance)
- **The implementation piece**—Terms of 504 plans are mandatory and enforceable through OCR complaints, local complaints, 504 due process hearings, and federal court.

Teacher training on implementation

Campus administrator involvement

Local systems to monitor classroom implementation

Resources and Supports

- Check into the CESD 504 Conference in Fall at 504idea.org (2-day conference, live and virtual options)
- Partnership with Frontline for its Section 504 products (to be updated as the US Department of Education revises the Section 504 federal regulations).