

Elkhart Independent School District

Section 504 (§504) Training

This document is based on notes from a presentation by David M. Richards, Attorney at Law of Richards Lindsay & Martin, L.L.P. at the Region VII Education Service Center.

I. Background and Purpose of Section 504 (§504)

“§504 is all about “leveling the playing field.”

The 1973 Rehabilitation Act is the “source” of §504. It is based on a single paragraph found in 29 U.S.C. §794(a) that reads:

“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 subject to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service...”

This translates to—“based solely on disability”:

1. Do not exclude from participation
2. Do not deny benefits
3. Do not discriminate

Section 504 regulations and Office of Civil Rights (OCR) Letters of Finding provide guidance on meeting §504 requirements. Other documents frequently referenced for guidance include:

- “Protecting Students with Disabilities: Frequently Asked Questions about §504 and the Education of Children with Disabilities” (Last modified March 17, 2011) is available on the OCR website at www.ed.gov/about/offices/list/ocr/504faq.html
- “Dear Colleague Letter 112LRP 3621 (OCR 2012)” of the Americans with Disabilities Act Amendments Act (ADAAA) [provides a new question and answer document]

II. §504 Questions and Answers

1. Who gets 504 services?

Any entity (*public school for our purposes*) receiving federal funds is subject to §504 and must provide participation and benefits without discrimination to the disabled. However, not every student with an impairment is eligible to receive §504 services. “You only get a service if you need it to “benefit” from the activity, instruction, project, process, etc.

Equal participation does not always equal “benefit” if the disability gets in the way. For example, providing a blind §504 student with equal access to the library does not mean he will “benefit” if there are no braille books or audio books in the library.”

2. Are §504 and Americans with Disabilities Act (ADA) related?

Yes. When Congress amended the ADA in 2008 with the ADA Amendments Act, it applied the changes to §504 as well.

- §504 students are entitled to FAPE (Free Appropriate Public Education)
- There is no federal funding for §504 since it is not an entitlement program like Special Education
- Special Education law trumps §504 law since it provides more protections for the disabled
- The chart below indicates the relative percent of students who generally fall in each category and their classifications

4. IDEA (*Individuals with Disabilities Education Act*) **Special Education Students**
These students have the most rights/protections.

3. Section 504 Students have physical or mental impairment(s) that substantially limit one or more life activities. These students have more rights/protections than those in green or blue sections.

2. Physically or Mentally Impaired Students (*who do not have substantial limits to one or more major life activities*) These students have a few more rights than those in blue—usually just classroom modifications to assist learning implemented by the teacher.

1. All Local Education Agency (LEA) Students These students have limited rights—mainly the right to attend the school.

3. Does §504 have a Child Find requirement like IDEA?

Yes. Schools can effectively satisfy this duty by adding the §504 child find notice to that required under IDEA, so that wherever the IDEA notice is published, the §504 notice is there as well.

4. When should the school refer for a §504 evaluation?

A student should be referred for a §504 evaluation when the district believes that the student may be eligible, when the district believes that the student has a physical or mental impairment that substantially limits one or more major life activities, AND believes that the student is in need of either regular education with supplementary services or special education and related services.

- A single source of data can trigger an evaluation
- Placement changes should not occur without evaluation
- Request for a dyslexia evaluation triggers the §504 process
- The district of the student's residence has the duty to evaluate but not necessarily the duty to serve if the student chooses to attend a private school

5. What is a §504 evaluation?

A gathering of data or information from a variety of sources so that the §504 Committee can make the required determinations. Formal testing is not required. "Enough data to reach a conclusion" is required but not defined. The evaluation is to be carried out "within a reasonable amount of time" which usually translates to the same timelines as evaluations for Individuals with Disabilities Education Act (Special Education).

6. Who conducts a §504 evaluation?

The §504 Committee should be comprised of a "group of knowledgeable people." They are to be knowledgeable about the student, understand the meaning of the evaluation data, and the placement options. The student him/herself may be on the committee if old enough and competent enough to "understand and be knowledgeable." §504 "placement" is not a "location" but a "means of instruction to accommodate needs."

7. Does the school need parental permission to evaluate?

Yes, in writing.

8. Is a medical diagnosis required?

No.

- Regulations do not require medical evaluations for any impairment to qualify under §504.
- If the district chooses to require a medical examination, it may not be at parent expense.
- The §504 Committee is not asked to “diagnose” impairments, but to “identify” impairments.
- A medical diagnosis may be considered among other sources. Other sources to be considered along with a medical diagnosis include “aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background and adaptive behavior.”

9. What is the eligibility standard?

To be eligible under §504, a student must be BOTH “qualified” (within the age range in which services are provided to disabled and nondisabled students under state law) AND “handicapped.” A handicapped person:

- Has a physical or mental impairment which substantially limits one or more major life activities,
- Has a record of such impairment, or
- Is regarded as having such an impairment

The terms “Significant Restriction” and Substantial Limitation” are sometimes used interchangeably.

10. What are major life activities?

Prior to the ADA Amendments, the U.S. Department of Education listed major life activities as:

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working

Congress added:

- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating
- "Interacting with others" may be considered as well but is not recognized by Congress

Congress also included "the operation of major bodily functions," including but not limited to,

- Functions of the immune system
- Normal cell growth
- Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

11. Does §504 deal with temporary impairments?

It can. Usually the temporary impairment must last at least weeks to be considered. An example would be a student with a broken leg in need of crutches or a student recovering from surgery who needs a wheelchair for a period of weeks or months.

12. Does the student have to fail to be §504 eligible?

No. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades.

13. Can a §504 student not making all A's be receiving FAPE (Free Appropriate Public Education)?

Of course. “For aids, benefits, and services, to be equally effective, they are not required to produce identical results or levels of achievement for handicapped and non-handicapped persons, but just to afford handicapped persons equal opportunity to obtain the same results, to gain the same benefit, or reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.”

14. Must the student have an impairment that substantially limits learning to be §504 eligible?

No. Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind from the system to access learning. For instance, a child with asthma who needs an inhaler to remain at school would qualify.

15. Is there a “disability per se” or an impairment that automatically results in eligibility under §504?

No. However, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. For example, a school should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under §504.

16. Can a student ever be served simultaneously through both a §504 Plan and an IEP provided under special education?

No. The §504 Plan will not satisfy the schools duty to serve an IDEA-eligible student, even though an IEP would satisfy the school’s duty to serve a §504 student. IEP trumps §504 Plan.

17. How often are re-evaluations required?

At least every three years.

18. Do §504 nondiscrimination protections extend beyond the classroom?

Yes. Equal opportunity to participate in extracurricular and nonacademic activities must be provided. “Reasonable accommodations” must be made to provide these opportunities. Accommodation becomes “unreasonable” when it would require a “fundamental alteration in the nature of a program” which means “undue financial and administrative burdens.”

19. Can a parent or guardian be required to attend a field trip in order for the §504 student to attend?

No.

20. Does §504 nondiscrimination duty apply to folks other than students?

Yes. Employees of the school are protected by ADA/§504, as well as parents and others in the community. This equates to equal access and opportunity for participation in a non-discriminatory way.

21. What is “Disability Harassment”?

Intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities in the school’s program. This may include verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating. Schools have a legal responsibility to prevent and respond to disability harassment.

22. Must a District allow Service Animals on campus?

Yes.

23. Why is discipline of students with disabilities a challenge?

Students sometimes have disabilities that affect behavioral controls (ED, ADHD, etc.). They sometimes do things, because of those disabilities, that violate student codes of conduct. Manifestation Determinations serve the purpose of identifying behavior related to disability.

- Behavior issues are best addressed through positive behavior management
- Fundamental Behavioral Assessments help to identify triggers and appropriate interventions
- Behavior Intervention Plans (BIP) set forth strategies, techniques, contingencies, and consequences that are used to reduce the presentation of certain target or priority behaviors and promote acquisition of adaptive behavioral competencies.

24. Can §504 students be disciplined for illegal drug or alcohol use?

Yes. “§504 allows schools to take disciplinary action against students with disabilities who are using drugs or alcohol to the same extent as students without disabilities.”

25. What does the Office of Civil Rights (OCR) look for when it investigates a §504 complaint against a school?

The OCR looks for Procedural Compliance. “Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of §504 related to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a §504 Plan or of an individualized education program (IEP). OCR focuses not on the decision reached by the §504 Committee but whether the decision was made by the required people, looking at the required data, asking the required questions, and providing the required notices.”

26. If a District is in violation of §504, what sanctions might OCR impose?

OCR initially attempts to bring the school into voluntary compliance through negotiation of a Corrective Action Agreement which might include updates or changes to policies, practices, or procedures. It might also require staff training on compliance areas to ensure understanding and consistent application or it could conduct a reevaluation where FAPE has been denied or neglected and provide compensatory education to make up for the error.

If this fails, OCR will initiate Enforcement Action. It may (1) initiate administrative proceedings to terminate Department of Education financial assistance to the school or (2) refer the case to the Department of Justice for judicial proceedings.