

QUESTIONS CONCERNING SECTION 504

1) Q: What is Section 504?

A: Section 504 is the basic civil rights provision with respect to terminating discrimination against America's disabled citizens. Section 504 was enacted through the legislative vehicle of PL 93-112, the Vocational Rehabilitation Act amendments of 1973. Although it is brief in actual language, its implications are far reaching. The statute reads in part: "No otherwise qualified disabled individual in the United States shall, solely by reason of 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." (29 U.S.C. 794)

2) Q: When would a student be eligible for services under Section 504, but not under IDEA?

A: There are two basic categories of students who would qualify under 504, but not under IDEA. The first category is students who do have disabling conditions identified in IDEA, but who do not meet the complete criteria of being educationally disabled (i.e., not having a significant impact on achievement or not requiring special education as defined in IDEA). Special education is defined as "specifically designed instruction." This means that the curriculum or instruction of the student needs to be individualized with an Individualized Educational Program. It does not include students who solely need related services such as counseling or speech/language therapy.

The second category would be students who do not have disabling conditions under IDEA, but who do have conditions that are identified and acknowledged under 504. The description of disabling conditions under Section 504 is much broader than IDEA. There is no categorical listing of disabling conditions. However, if a child is IDEA eligible, s/he will also be protected under Section 504. The regulations also make clear that certain conditions, such as drug or alcohol addiction, heart disease, etc. which would not qualify a child under the IDEA, may be disabling conditions under Section 504.

While Section 504 requires that the condition "substantially limit a major life activity" such as walking, seeing, hearing, speaking, breathing, learning, working, or caring for oneself, it need not necessarily adversely affect the student's educational performance. Examples of other disabling conditions under Section 504 (if they substantially limit a major life activity) not typically covered under the IDEA are:

1. Communicable diseases: AIDS, aids related complex (ARC) or asymptotic carriers of the AIDS virus (HIV); tuberculosis;
2. Temporary disabling conditions: Students injured in accidents or suffering short-term illnesses;
3. Attention Deficit Disorder (ADD);
4. Behavior disorders;
5. Chronic asthma and severe allergies;
6. Physical disabilities such as spina bifida, hemophilia, and conditions requiring children to use crutches;
7. Diabetes;

8. Alcohol/Drug: Alcoholism and Drug addiction are physical impairments which fall under the coverage of Section 504 only if the student is currently no longer using drugs.

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Note that some of these conditions, such as tuberculosis, diabetes and hemophilia may be severe enough to affect educational performance and, therefore, fall under the IDEA as well.

- 3) Q: What does Section 504 say with respect to the guarantee of free and appropriate public education?
- A: Section 504 makes essentially the same requirement.
- 4) Q: Are there any funds, federal or state, authorized for students who are identified under Section 504?
- A: No. Section 504 is a civil rights statute, like Title VI and Title IX, and does not contain any specific authorization for funds.
- 5) Q: Where, then, do funds come from to pay for the required services for students covered under Section 504?
- A: All funds would need to come out of the operating school district budget. Some services may be parallel and thus provided under special education line items. It may also be appropriate for certain items to be funded under the regular education line items. It is very clear under 504 that the education must be provided free, at no cost to parents.
- 6) Q: What does 504 say regarding Least Restrictive Educational Environment?
- A: The language of the 504 regulation is, for the most part, nearly identical to the least restrictive statutes in IDEA. There remains one notable distinction, however. The 504 regulations include the “nearest placement to home” as an additional determinant of instructional placement in the least restrictive environment.

- 7) Q: Can 504 students be placed in special education programs if they are not coded under IDEA?
- A: The 504 regulations include equal access to all regular and special education services. It would, therefore, be discriminatory not to allow students who have been identified as eligible for 504 to participate in special education programs. Depending on the extent of participation in special education programs and the amount of services the student requires, it may be appropriate for the student to be considered and potentially determined to be eligible for special education if the level of services is significant.
- 8) Q: Can a student who is not coded under IDEA but is 504 eligible receive related services in isolation (i.e., without special education services)?
- A: It is very appropriate for 504 eligible students to receive related services if these are listed under the accommodations to be provided in their 504 accommodation plan. Unlike IDEA, Section 504 does not prevent related services from being provided in isolation.

NOTE: These are examples of some of the common questions asked regarding Section 504. As the schools implement Section 504 and carry through the newly identified procedures, new questions may arise. Anyone who has questions on the implementation of Section 504 or the comparison of Section 504 with IDEA are encouraged to contact the Special Education Director at 632-5563, extension 3008.

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