

SECTION 504 DEFINED

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination against people with handicaps. Section 504 regulation defines an individual with handicaps as any person who may

1. have a mental or physical impairment that substantially limits one or more major life activities; or
2. have a record of such an impairment; or
3. be regarded as having such impairment.

The key factor in determining whether a person is considered an "individual with handicaps" covered by Section 504 is whether the physical or mental impairment results in a substantial limitation of one or more of the person's major life activities (see major life activities).

Section 504 provides certain *protections* to students who may not qualify for special education. In general, Section 504 prohibits discrimination against persons with disabilities in all programs and activities conducted by recipients of federal financial assistance. Section 504 requires school districts to provide a free appropriate public education (FAPE) to qualified students in their jurisdictions. FAPE refers to the provision of general or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards.

The school district has specific responsibilities under the act, which include the responsibility to identify, evaluate, and if the child is determined to be eligible under Section 504, to afford access to appropriate educational services through a written accommodation plan. The educational services should allow the child to have commensurate opportunity or comparable educational access as his or her peers.

Being regarded by someone, for example the child's doctor or parent/guardian, as handicapped/ disabled is *not sufficient* to trigger the requirements for evaluation. It is the building intervention team's obligation upon receiving this information to determine if there is reason to believe that this child, because of an actual disability, may need general classroom accommodations or special education and related aids and services, and as a result will need to be evaluated. The opinion of the doctor or the parent/guardian is a piece of information to be considered in that decision. While a full evaluation may not be necessary for an appropriate decision to be reached, school staff must obtain and review sufficient and credible information to substantiate their decision.

The school district must also provide notice and due process. If the parent/guardian disagrees with the determination made by the professional staff of the school district, he/she has a right to a hearing with an impartial hearing officer.

The United States Department of Education's Office of Civil Rights (OCR) is charged with the responsibility of ensuring compliance with Section 504 in order to: 1) protect qualified disabled students from denials or exclusions from educational opportunities based on a disability; 2) prohibit unequal treatment of qualified disabled students based on their disability; and, 3) protect qualified disabled students when IDEA protection is not applicable or available. Regulations grant OCR the authority to investigate individual complaints of discrimination. It has virtually no discretionary power not to investigate complaints. OCR's regulatory authority to investigate complaints places the federal government face-to-face with local administrators.

The Family Educational Rights and Privacy Act (FERPA) also specifies rights related to educational records. This act gives the parent/guardian the right to:

- 1) Inspect and review his/her child's educational records.
- 2) Make copies of these records.
- 3) Receive a list of all individuals having access to those records.
- 4) Ask for an explanation of any item in the records.
- 5) Ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the

child's rights.

6) A hearing on the issue if the school refuses to make the amendment.

IMPAIRMENTS DEFINED

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine. This definition includes such diseases and conditions as orthopedic, visual, speech and hearing impediments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; attention deficit disorder (ADD); attention deficit hyperactivity disorder (ADHD); acquired immune deficiency syndrome (AIDS); and human immune deficiency virus (HIV+).

The Amendments Act specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability. The district must make a Section 504 determination based upon the student's disability as it presents itself without the mitigating measures. The Amendments Act provides a non-exhaustive list of mitigating measures as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity.

Temporary disabilities are expressly not covered under the Amendments Act. A student shall not be regarded as having a disability if the disability is transitory and minor. Transitory is defined as an impairment with an actual or expected duration of six (6) months or less.

MAJOR LIFE ACTIVITIES

Major life activities, as defined in Section 504 regulations at 34 CFR 104.3(j)(2)(ii) include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act, Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity. The Amendments Act lists new categories of activities that Congress has deemed to be major life activities. Even though the previous list was non-exhaustive, now the list is just more expansive, giving more specific examples of what is covered. It now lists just about everything and still continues to be non-exhaustive.

For students, a major life activity is learning. Therefore, when it is suspected learning is limited, determine if the suspected impairment is preventing the student from learning the required curriculum for his or her grade. If the student is learning and passing, the suspected impairment probably does not rise to the level of a significant limitation on learning.