

## Overview of Section 504 of The Rehabilitation Act of 1973

Congress prohibited discrimination against persons with disabilities in the Rehabilitation Act of 1973, in a segment most often referred to simply as “Section 504.” This was a broadly worded prohibition that covers both children and adults. It applies to programs that receive any federal financial assistance. The principles enumerated in this section were later expanded and served as the basis for the 1990 Americans with Disabilities Act (ADA). Section 504 prohibits discrimination against individuals, whose physical or mental impairment substantially limits one or more major life activities, including:

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

“Physical or mental impairment” was defined to mean: “(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculo-skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”  
(34CFR104, p336-337)

Examples of impairments which may entitle an individual to 504 protection include:

- Diseases such as AIDS, tuberculosis, or hepatitis B;
- Medical conditions such as chronic asthma, diabetes, heart disease, or seizure disorder; physical disabilities such as cerebral palsy or muscular dystrophy;
- Attention deficit disorder with or without hyperactivity;
- Alcohol/drug addicted students (does not protect individuals who are currently using drugs or alcohol);
- Students with temporary disabilities; and
- Students with pregnancy related complications.

It is important to remember that the presence of one of these conditions in itself does not qualify an individual for 504 protection. The impairment must also cause a substantial limitation of a major life activity.

Importantly, the federal regulations for Section 504 went further by prohibiting discrimination against any person who “**has a record of such an impairment**” or who “**is regarded as having such an impairment.**” In so many words, this refers to persons who are *treated* as if they have the impairment, even if they no longer do, or never did. These phrases were defined in the same regulations as follows:

**Has a record of such an impairment** means has a history of, or has been *misclassified* as having, a mental or physical impairment that substantially limits one or more major life activities.” (emphasis added)

**Is regarded as having an impairment** means (A) has a physical or mental impairment that does *not* substantially limit major life activities but that is treated by a [funding] recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities *only as a result of* the attitudes of others toward such an impairment; or (C) has none of the impairments defined in...this section *but is treated by* a [funding] recipient as having such an impairment.” (emphasis added)

It is important to note that the second and third prongs of Section 504 (has a record of or is regarded as having an impairment) do not guarantee accommodations to the individual. These prongs simply afford the individual with protection from discrimination.

Determination of the applicability of Section 504 can be very difficult at times. Each school system has a contact person who should be consulted for guidance on Section 504 issues. In addition, the Georgia Department of Education document, A Handbook of Questions and Answers for Local School Systems: Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990, may be of assistance.

In some ways, Section 504 is similar to IDEA (Individuals with Disabilities Act), in that it involves rights, evaluation, an individualized plan, follow-up, and reevaluation. There are, however, two very important differences:

1. Section 504 is a civil rights law that ensures accommodations for *equal access* to services (here, instruction) that non-disabled students receive in the regular classroom, whereas IDEA involves individualized instruction by specially trained teachers; and
2. IDEA brings extra funding to IDEA-placed students, whereas Section 504 brings no extra funding. Thus, they differ both in goals and extent.

### **Section 504: Frequently Asked Questions**

***Who is protected by Section 504?*** Any otherwise qualified person who currently has an impairment which substantially limits one or more major life activities is eligible for protection and services under Section 504. Any student who is regarded as having an impairment or who has a record of an impairment is eligible for protection from discrimination.

***What is a major life activity?*** Section 504 defines major life activities as those activities involving caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

***What are "substantial limitations"?*** This term is not defined in the act or the regulations and is left to each agency to define. However, the Americans with Disabilities Act (ADA) suggested that the term "substantially limits" be interpreted to mean that the student "is unable to perform a major life activity that the average student of approximately the same age can perform, or that the student is significantly restricted as to the condition, manner or duration under which a particular major life activity is performed as compared to the average student of approximately the same age". This interpretation can provide some guidance in defining the phrase.

***What is "reasonable accommodation"?*** Reasonable accommodation in the school setting is a modification or adjustment of educational programs to afford students with disabilities equal opportunity to access the programs. Reasonable accommodation must be made for persons with disabilities unless the schools can show that the requested accommodations would impose undue hardship.

***What protections are afforded to those with a “record of an impairment” or who are “regarded as having an impairment”?*** Under these prongs of the act, individuals are only eligible for protection from discrimination. For example, a student who has a record of leukemia but who is currently in remission cannot be denied the opportunity to try out for the football team. Likewise, a student with an orthopedic impairment cannot automatically be regarded as disabled when in reality the student experiences only minimal limitations.

***Are IDEA (special education) students protected by Section 504?*** Students who are served through special education under IDEA are also covered under Section 504. However, individuals covered by Section 504 are often not covered by IDEA. The determining factor will be the severity of the disability and the need for special education and related services.

***Do students who have an Individualized Education Program under IDEA need a 504 Plan as well?*** No. The IEP should cover all aspects of a student’s educational program.

***When a student is dismissed from special education, is he automatically eligible for 504?*** Yes and no. The student cannot be discriminated against based on history of an impairment. If the 504 Committee determines that the student continues to have a disability that substantially limits a major life activity even though he does not meet IDEA eligibility requirements, the student would then be eligible for services and protection under Prong 1 of Section 504.

***Can a temporary disability qualify a child for accommodations under Section 504?*** In some instances, students with temporary disabilities are eligible for 504 protection. The committee should consider the nature and severity of the impairment and what its permanent or long-term impact will be.

***What protections are afforded to alcohol and/or drug addicted students?*** Section 504 does not provide protection to persons currently engaging in alcohol/drug use or to casual users. It does protect individuals who have successfully completed rehabilitation programs, persons who are participating in a rehabilitation program, and persons regarded erroneously as drug users.

***Who is responsible for implementing Section 504?*** Section 504 is considered to be a provision of general education. It is therefore the responsibility of classroom teachers and the principal to assure that Section 504 accommodations are carried out.

***Who makes up the 504 Committee?*** Basically the same individuals who make up the SST are appropriate for the 504 Committee. Many school systems choose to use the SST as the vehicle for implementation of 504, although it is not required.

***Is evaluation necessary to determine 504 eligibility?*** Some type of evaluation is necessary. However, the evaluation may involve review of information such as medical information, standardized test scores, and classroom data that is already available to the committee rather than a new formal evaluation.

***Is a medical report always necessary to determine 504 eligibility?*** No. Although the 504 Committee should attempt to get as much information as possible regarding the student’s

condition, a physician's statement is not required to determine eligibility. If the committee determines that a formal evaluation of any type is necessary to determine eligibility, it must be provided at no cost to the parents.

***Must students have a written 504 Plan in order to receive protection or accommodations?*** No. Eligible students are protected by Section 504 even if a formal plan is not in place. In many cases, an effective SST plan will provide for needed accommodations.

***Can a teacher refuse to implement accommodations that are written into a student's 504 Plan?*** After the 504 Committee has determined the accommodations that are necessary for a student, teachers are required to implement them. Failure to do so places the school district in violation of Section 504.

***Does every child who takes medication at school need a 504 Plan?***

No. Students may have accommodations such as administration of medication without having a formal plan. Local school system policy should be implemented.

***If a student has a 504 Plan, will a teacher or paraprofessional be assigned to come and work with that student?*** In most circumstances, no additional personnel will be assigned to carry out accommodations. Section 504 accommodations are generally carried out by the classroom teacher or other designated personnel within the school. However, a student who is unable to attend school may qualify for Hospital Homebound services and receive instruction from a visiting teacher.

***Are there any special rules for PE?*** The 504 Committee should determine to what extent a student will be able to participate in PE. Alternate assignments or exemptions should be addressed in the 504 Plan.

***Is it possible for a 504 student to fail a class?*** Yes. 504 protection does not automatically dictate that a student will receive passing grades. The 504 Committee must determine if the accommodations were appropriate and if they were implemented for the student. Team members must keep in mind that many factors influence a student's academic performance.

***How does eligibility for Section 504 affect discipline?*** Students may not be punished for behavior that is caused by a disability. If it is determined that the behavior was not related to the disability, the student could receive the same consequences as a student without a disability.

***Can the 504 Committee order accommodations to the ACT/SAT?*** The 504 Committee can make recommendations based on accommodations written into the 504 Plan. However, the Educational Testing Service makes all decisions regarding accommodations on an individual basis.

***Can the 504 Committee order accommodations to district-wide standardized testing and the Georgia High School Graduation Test?*** Accommodations as outlined in the testing manual can be recommended as part of a 504 Plan. However, committees should exercise caution in making these decisions. Ethically, students must need the accommodations during the rest of the school

year and not just during weeks of standardized testing. 504 Plans should not be written for the sole purpose of providing accommodations on standardized testing. In fact, a student may be placed at a disadvantage if an accommodation is introduced for the first time at the administration of a standardized assessment.

***Can a student be dismissed from 504?*** Yes. Students who no longer have an impairment are no longer eligible for 504 services. They will continue to be eligible for protection from discrimination based on their history of impairment.

***Does 504 eligibility automatically guarantee that a student is chosen for extracurricular teams/activities?*** No. Students with disabilities must be given equal access to compete for and participate in these activities with reasonable accommodations. If the student fails to meet criteria for team membership, then he is not considered to be “otherwise qualified”. Discrimination occurs when the decision not to allow the student to participate is based solely on the fact that the student has a disability.