



DESERT / MOUNTAIN
CHARTER SELPA

Chapter 16: Civil Rights Protection and 504 Accommodations

SECTION A: SECTION 504 OF THE REHABILITATION ACT OF 1973

SECTION B: AMERICANS WITH DISABILITIES ACT (ADA)

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RE: VARIOUS MATTERS

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Introduction

Section 504 of the Rehabilitation Act of 1973 provides regulations to prevent discriminatory actions to those individuals defined as disabled. The definition of an individual with disabilities is provided within this chapter.

Section A – Section 504 of the Rehabilitation Act of 1973

Children may be disabled as defined in Section 504, even though they do not require services pursuant to the Individuals with Disabilities Education Act (IDEA). Children who are identified as individuals with disabilities according to IDEA criteria are not addressed under the Section 504 guidelines. The needs of IDEA eligible children are provided under state and federal laws.

Each Charter Local Education Agency (LEA) within the Charter Special Education Local Plan Area (SELPA) is required to develop policies and procedures to ensure children who are disabled within the meaning of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with the required general education modifications, as well as related aids or services that are designed to meet the needs of each child with a disability as adequately as the needs of each child without a disability.

DEFINITIONS

Title 34 of the Code of Federal Regulations Subpart A § 104.3 provides the following
definitions:

Handicapped person: Any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Physical or mental impairment: (a) 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; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major life activities: Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Has a record of such impairment: Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Is regarded as having an impairment: (a) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a 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 impairment; or (c) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

Identification and Referral Procedures

Children who, because of a disability, need or who are believed to need Section 504 support, special education, or related services in order to receive a Free Appropriate Public Education may be referred by a parent, teacher, other certificated school personnel, or community agency. This referral is submitted to the Charter LEA Section 504 team for consideration.

The Section 504 team will review the child's school history, individual needs, the meaning of evaluation data, and the modification options as well as academic, and social and behavioral records to determine if an evaluation under Section 504 or IDEA is appropriate. If a request for evaluation is denied, the parent shall be informed in writing of this decision as well as provided information regarding their procedural rights to appeal.

Evaluation of the Child

Evaluation of the child for Section 504 eligibility should be completed by a Section 504 team. This evaluation should include an evaluation of the nature of the child's disability and the impact of the disability on the child's education. The evaluation should include consideration of any behaviors that interfere with regular participation of a child who otherwise meets the criteria for participation in the educational program or activities.

No final determination will be made by the Section 504 team of whether the child will or will not be identified as a child with a disability within the meaning of Section 504, without first inviting the parent of the child to participate in the meeting concerning such determination.

A final decision will be made by the Section 504 team in writing. The parent of the child shall be notified of the Section 504 procedural safeguards available to them, including the right to an impartial hearing and review pursuant to Title 34 of the Code of Federal Regulations § 104.36.

Plan for Services

The Section 504 team will complete a service plan document that describes the disability and the modifications as well as related aids or supports needed. The plan will specify how the interventions will be provided and by whom. All staff who work with the child in the school will be informed of the Section 504 plan.

A child with a disability requiring interventions in accordance with Section 504 shall be placed in the general education environment with the use of supplementary aids and services unless it is demonstrated that such placement cannot be achieved satisfactorily. Children with disabilities shall be educated with those who are not disabled to the maximum extent appropriate to the individual needs of the child.

Review of Student Progress

The Section 504 team will coordinate the monitoring of the child's progress as well as the effectiveness of the service plan annually. Prior to any subsequent significant change in placement, a comprehensive reevaluation of the child's needs will be conducted. If the Section 504 plan for services is implemented and then found to be ineffective, the child should then be assessed for IDEA eligibility.

Procedural Safeguards

The parents shall be notified in writing of all Charter LEA decisions concerning the identification, evaluation, or educational placement of children pursuant to Section 504. The parent shall have the right to request an impartial Section 504 Administrative Hearing with opportunity for participation by the parent and their counsel.

Section B – Americans with Disabilities Act (ADA)

Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities. By breaking down these barriers, the Americans with Disabilities Act (ADA) enables society to benefit from the skills and talents of individuals with disabilities, will allow all to gain from their increased purchasing power and ability to use it, and will lead to fuller, more productive lives for all Americans.

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local services, and telecommunications.

It is divided into five titles:

Title I - Employment

Business must provide reasonable accommodations to protect the rights of individuals with disabilities in all aspects of employment. Possible changes may include restructuring jobs, altering the layout of workstations, or modifying equipment. Employment aspects may include the application process, hiring, wages, benefits, and all other aspects of employment. Medical examinations are highly regulated.

Title II - Public Services

Public services, which include state and local government instrumentalities, the National Railroad Passenger Corporation, and other commuter authorities, cannot deny services to individuals with disabilities, participation in programs or activities which are available to individuals without disabilities. In addition, public transportation systems, such as public transit buses, must be accessible to individuals with disabilities.

Title III - Public Accommodations

All new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if readily achievable. Public accommodations include facilities such as restaurants, hotels, grocery stores, retail stores, etc., as well as privately owned transportation systems.

Title IV - Telecommunications

Telecommunications companies offering telephone service to the public must have telephone relay service to individuals who use telecommunication devices for the deaf (TTYs) or similar devices.

Title V - Miscellaneous

Includes a provision prohibiting either (a) coercing or threatening, or (b) retaliating against the disabled or those attempting to aid individuals with disabilities in asserting their rights under the ADA.

The ADA's protection applies primarily, but not exclusively, to "disabled" individuals. An individual is "disabled" if he or she meets at least any one of the following tests:

- He or she has a physical or mental impairment that substantially limits one or more of his/her major life activities.
- He or she has a record of such an impairment.
- He or she is regarded as having such an impairment.

Other individuals who are protected in certain circumstances include (1) those, such as parents, who have an association with an individual known to have a disability, and (2) those who are coerced or subjected to retaliation for assisting individuals with disabilities in asserting their rights under the ADA.

While the employment provisions of the ADA apply to employers of fifteen employees or more, its public accommodations provisions apply to all sizes of business, regardless of number of employees. State and local governments are covered regardless of size.

Effective enforcement of this landmark civil rights legislation is a high priority of the Federal Government. Find out more about the ADA and other laws that protect the rights of individuals with disabilities at <https://www.ada.gov/ada.intro.htm>.

For answers to additional questions, call the ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TDD).

Additional ADA resources are listed in the Resources section located at the web site listed above.

Addresses for ADA Information

Architectural and Transportation Barriers Compliance Board
1331 F Street, NW Suite 1000
Washington, DC 20004-1111

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights Section – NYAV
Washington, DC 20530

U.S. Department of Transportation
Federal Transit Administration
400 Seventh Street, SW
Washington, DC 20590

U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507

APPENDIX A: Office of Civil Rights (OCR) Response to Veir Inquiry Re: Various Matters

20 IDELR 864

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Texas Association of Section 504
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Digest of Inquiry

[Date Not Provided]

- May a medical statement from a student suspected of being disabled be required when the district is unable to identify a specific medical or physical impairment that substantially limits a major life activity?
- Must a district provide special types of food when a student is determined to need dietary modifications at school?
- Are districts responsible for providing services to private school students with disabilities? Must districts conduct child find activities at private schools?
- Do students who are referred for special education eligibility but who do not meet IDEA criteria, automatically become eligible under Section 504?
- Can a student who is identified as eligible under both the IDEA and Section 504 receive certain IDEA services while still being provided Section 504 services within the regular classroom, or should such a student receive all services for his/her disability pursuant to the IDEA?
- Do districts have the right to take parents to due process hearings under Section 504?
- If a student is identified as in need of modifications or services under Section 504, but the parent chooses to provide the student with home schooling, does the district continue to be responsible for providing services to the student within the home environment?
- What is the difference between the terms “related aids and services” and “supplemental aids and services” under the Section 504 regulations? What is the difference between the phrases “regular or special education and related aids and services” and “special education or related services...in a regular or special education program” under the Section 504 regulations?
- If a student with a disability, who is eligible under Section 504, is constantly disruptive on the school bus, may the district revoke the student’s bus privileges, even if the student requires transportation to get to school?

Digest of Response (December 1, 1993)

Medical Assessment Required Only if District Suspects a Disability

A district may not require a parent or a student to provide a medical statement if the district suspects that the student has a disability that would result in Section 504 eligibility. In such a circumstance, the district is obligated to conduct an evaluation of the student, including a medical assessment, if necessary, at no cost to the parents. On the other hand, if the district does not believe that the student has a disability that would result in Section 504 eligibility, then the district must inform the parents of their due process rights to challenge the decision not to evaluate.

Special Foods May be Required for Students with Disabilities

Unlike medication, which a district is not responsible for providing to any student, if the district provides food services to students generally, then it would also be required to provide appropriate food services to a student with a disability who has special dietary needs, on the same basis that food services are provided to students without disabilities. Thus, as determined on a case-by-case basis, the district may be required to provide special foods to meet the individual needs of a student with a disability.

Parentally-Placed Students Lack Entitlement to Services

If a district has made FAPE available to a student with disabilities, and the parent or guardian nevertheless places the student at a private school, then the district is not required to provide services to the student at the private school. Furthermore, while districts are required to take steps annually to identify and locate students with disabilities who are not receiving public educations, the Section 504 regulations do not specify the manner in which a district may undertake this child find responsibility. Accordingly, steps other than conducting child find activities at private school locations may be sufficient, such as disseminating notices to private schools and state and local agencies and placing notices in newspapers.

IDEA Ineligibility Does Not Automatically Result in Section 504 Eligibility

Depending on the severity of their disabling conditions, students who do not meet IDEA eligibility criteria may or may not fit within the definition of Section 504 eligibility. Section 504 eligibility is not automatically bestowed on a student who is referred for a special education evaluation and who is subsequently determined not to be IDEA-eligible.

Section 504 Requirements Met by Compliance with IDEA

OCR cannot conceive of any situation in which children identified as IDEA-eligible are not also entitled to Section 504 protection. However, pursuant to the Section 504 regulations, the implementation of an IEP in accordance with the IDEA is one means of meeting the Section 504 requirements for a student with a disability, assuming that the student is being served for the same disability under both the IDEA and Section 504.

Districts May Take Parents to Section 504 Hearings

Districts may take parents to due process hearings under Section 504, and in some circumstances, are required to do so. For example, if a child is receiving Section 504 services and the parents subsequently withdraw their consent to the provision of these services, then the district may not simply accede to the parents' wishes, but rather, must take the parents to a hearing under Section 504, if the district continues to believe that the services are necessary.

Home-Schooled Students Not Entitled to Section 504 Services

If a district has offered FAPE to a student who has been identified under Section 504, but the parent decides not to enroll the student in public education program (such as a parental decision to provide the student with home schooling), then the district is not responsible under Section 504 for the provision of educational services to the student.

Certain Section 504 Terms and Definitions are Interchangeable

The meaning of the terms "related aids and services" and "Supplemental aids and services" under the Section 504 regulations at 34 CFR 104.33(b) and 104.34(a), respectively, are identical and, therefore, interchangeable. The phrases "regular or special education and related aids and services" and "special education or related services...in a regular or special education program" under the Section 504 regulations at 34 CFR 104.33(b) and 104.35(a), respectively, also have identical meanings.

Transportation Services May Not be Unilaterally Terminated

If transportation is deemed to be a related service for a student with a disability, then the district may not revoke transportation services, even when the student has exhibited disruptive or dangerous behavior during transit to and from school, without taking steps to conform to all of the Section 504 requirements that are applicable to disciplinary sanctions. A district may, however, seek to change the mode or method of providing transportation services if a student with a disability poses a danger to himself or others.

I am pleased to respond to your letter to Assistant Secretary for Civil Rights, Norma V. Cantu, on behalf of the Texas Association of Section 504 Coordinators and Hearing Officers. In your letter, you ask 10 questions. I will restate each question, and follow each with a response.

- 1. Can a district require a medical statement for students for whom they cannot pinpoint a medical or physical impairment that is substantially limiting a major life activity within the schools and for which assistance is needed in the school? If the incident was many years ago, must the district have a medical record or statement prior to ruling eligibility?**

A district cannot require a parent or student to provide a medical statement *if* the district suspects that the student has a disability that would necessitate the provision of regular or special education and related aids and services under the regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504). However, a school district is not required to evaluate a student who the school district does not believe has a disability, *e.g.* a mental or physical impairment which substantially limits a major life activity, such as learning. A district is required to conduct an evaluation of any person who, because of disability, needs, or whom the district believes to need, regular or special education and

related services before placing the person in a regular or special education program with related services, 34 C.F.R. §104.35(a). If a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 C.F.R. § 104.35(a) and (b), the district must ensure that the child receives this assessment at no cost to the parents. If alternate assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment. If a district does not believe that a student has a disability and refuses to evaluate the child, the district must inform the parents of their due process rights under 34 C.F.R § 104.36.

Please note that we did not respond to the second question regarding a medical record because we did not understand the context, *e.g.*, What does “if the incident was many years ago” mean?

2. Are districts required to provide the food when dietary modifications are needed? Or do parents provide the food and the school prepare it (like with medication)?

It depends. A recipient, in providing any aid, benefit, or service, may not deny or afford a person with a disability an opportunity to participate in, or benefit from, an aid, benefit, or service, such as the provision of food services, that is not equal to, or as effective as, that provided to persons without disability. The recipient also is required to provide free appropriate public education to each qualified person with a disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met. *34 C.F.R. § 104.33 (a) and (b)*. Unlike medicine, which the school is not required to provide for any student, if the school provides food to students generally, it would also have to provide an appropriate lunch to the student with disabilities who has special dietary needs on the same basis that food is provided to students without disabilities. Depending on the circumstances, the school may have to provide special foods to meet the individual needs of the student with disabilities. This responsibility is determined on a case-by-case basis.

3. Are the public schools that have responsibilities under Section 504 also responsible for providing services to students in private schools? Must a child find be conducted in the private schools by the public entity? Must the public schools provide evaluations for private school children who are suspected of having a substantial limitation in one or more life activities if the parents request one? If the public school must serve these children, must the public school provide the transportation? Can these services be after school, or must they be held during the school hours? Is there a potential for a conflict such as that in *Aquilar v. Felton* and Chapter 1 issues?

If a recipient has made available a free appropriate public education to a person with a disability and the person’s parent or guardian chooses to place the person in a private school, Section 504 does not require the recipient to provide services in the private school. *34 C.F.R. § 104.33(c)(4)*. Please note I have not answered your other questions because they were premised on the notion that under Section 504, public schools must serve persons with disabilities, placed in private school by a parent.

The Section 504 regulation at 34 C.F.R. § 104.32 does not require public schools to take steps annually to identify and locate children with disabilities who are not receiving a public education and to publicize to children with disabilities and their parents the rights and duties established by Section 504 and the regulation implementing Section 504. The regulation does not specify the manner in which a district must meet its location and notification responsibility. There are many means available including notices to private schools, state and local agencies, and notices placed in newspapers.

4. **For students who are referred to Special Education but do not qualify under IDEA criteria, do they automatically become Section 504 students? (Board policies of most districts state that the students automatically become Section 504 if they do not qualify for IDEA services.)**

Under Section 504, a “person with disabilities” is defined as any person who has a physical or mental impairment which substantially limits a major life activity. Thus, depending on the severity of their condition, students who do not meet the standards under Part B of the Individuals with Disabilities Education Act (IDEA) may or may not fit within the Section 504 definition. It is not automatic.

5. **Can a student be identified as IDEA eligible be receiving some services under IDEA, and also be identified as a Section 504 student and be receiving different assistance in the regular classroom under Section 504? If the child is eligible for IDEA for the disability, shouldn't they receive all services for their disability under IDEA?**

For purposes of this response, we assumed that the student described in the question is being served for the same disability under IDEA and Section 504. In order to be eligible for services under the IDEA, a child must be found to have one or more of the 13 disability categories specified and must also be found to need special education. The Office for Civil Rights cannot conceive of any situation in which these children would not also be entitled to the protection extended by Section 504. A student identified as IDEA eligible and receiving services under the IDEA in order to receive a free and appropriate public education could receive the same assistance in order to comply with Section 504. Section 104.33(b)(2) states that implementation of an individualized education program developed in accordance with IDEA is one means of meeting Section 504's requirement for the provision of regular and special education and related aids and services designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met.

6. **It is clear that a parent can take the school district to a hearing regarding their Section 504 student. Can a district take a parent to hearing as well?**

Yes. For instance, if a child is receiving services the school district thinks are necessary for the provision of a free appropriate public education under Section 504, and the parent decides he/she no longer wants the child to receive the services; the district cannot simply accede to the parent's wishes. It must use the Section 504 due process hearing requirements or other proceedings if the school district believes the child needs the services.

7. **If a child is identified as in need of modifications/services under Section 504, and the parent decides to home-school the child, is the district still responsible for providing services in the home for this child because they are in the jurisdictional area of the school's responsibility?**

No. Where a district has offered an appropriate education, a district is not responsible, under Section 504, for the provision of educational services to students not enrolled in the public education program based on the personal choice of the parent or guardian. *34 C.F.R. § 104.33 (o)(4)*.

8. **Section 104.33(b) speaks to "related aids and services." What is the difference between this and 104.34(a) "supplemental aid and services?" Section 104.33(b) speaks to "regular or special education and related aids and services," whereas 104.35 speaks to "special education or related services ... in a regular or special education program." Please provide clarification as to the meaning of these phrases and how they are to be interpreted.**

Under Section 504, the meaning of the terms "related aids and services" and "supplemental aids and services" is identical, and the terms are interchangeable. The phrases "regular or special education and related aids and services" in Section 104.35(a) and "special education or related services ... in a regular or special education program" also have identical meanings.

9. **If a Section 504 child is, due to his handicapping condition, constantly disruptive on the school bus, can the district have the child's bus privileges removed if s/he needs the transportation to get to school? If so, must the district still provide transportation? How about when the child is a threat to the safety of other children on the bus?**

If transportation is a related service for a child with disabilities, any incident of misconduct on the bus should be viewed in the same manner as any disciplinary incident in the school. A district cannot revoke transportation services just as a district could not suspend a student with disabilities in excess of 10 days or, in some cases, impose cumulative suspensions exceeding 10 days without taking a number of prior actions. A district can change the mode or method of providing transportation services if a student with disabilities is endangering himself or others, just as a district can place a child with disabilities in a more restrictive setting if the child becomes dangerous.

10. **Must a child who has a record of impairment, who was protected by Section 503 at one time but is no longer in need of any special accommodations, be disciplined in the same manner as a child who is currently receiving accommodations due to a current impairment? In other words, both students are Section 504, one is current and the other has a record of an impairment although not currently receiving services, but is the student who is not currently receiving Section 504 services and protection still entitled to the manifestation determination prior to disciplinary actions?**

Your question was somewhat confusing because we could not determine whether you were concerned about a person who no longer has a disability or who no longer requires services. A child with a disability who does not require services is still entitled to the protections afforded by Section 504.

I hope this information has been helpful. If you have any questions, please call Ms. Gale Barron Black at (202) 205-8524.

Jean P. Peelan
Director, Elementary and Secondary Education, Policy Division
Office for Civil Rights

APPENDIX B: Sample Section 504 and the ADA Notice of Procedural Safeguards (source: Perry A. Zirkel)

For students suspected of being eligible solely under the Section 504 and the Americans with Disabilities Act definition of an individual with a disability, but not also eligible under the generally more limited “disability” definition in the Individuals with Disabilities Education Act, questions commonly arise as to compliance procedures with the regard to parental notice.

In the accompanying box, we provide the essential ingredients of such a form.

In addition, districts may wish to add other, discretionary features, such as:

1. An introductory section citing and describing the nondiscrimination obligation of Section 504 and the ADA.
2. More details about the listed procedural rights, such as an explanation of the term “educational placement” and “significant change in placement” in this pure (rather than overlapping with the IDEA) 504/ADA context and about the regulatory requirements for evaluation and placement.
3. A list of the eligible child’s substantive rights, such as the Sec. 504 definition of free and appropriate public education and its least restrictive environment requirements for academic and nonacademic settings.
4. And other, more general requirements, such as your grievance procedure and 504/ADA coordinator. In any event, it is advisable to develop a procedure to document parents’ receipt of this notice.

Do not confuse this notice of procedural safeguards with its IDEA counterpart (34 C.F.R. §§ 300.503-300.504), which is more extensive and only applies to “double-covered” students, i.e., those who are eligible under the IDEA, not just 504/ADA. Similarly, do not confuse this Sec. 504 individual-notice requirement (34 C.F.R. § 104.36) with its more general minimal institutional-notice requirement (34 C.F.R. § 104.8 and 28 C.F.R. § 35.106) of nondiscrimination based on disability.

Use this procedural safeguards notice drafted by Perry Zirkel to ensure that you are in compliance with Section 504 and the Americans with Disabilities Act. Refer to the article above for ideas on how you can customize this form to fit the needs of your particular district.

Sample Language

In accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the *(insert name of LEA or School District)* provides you, as the parent or guardian, with the following procedural safeguards in relation to your child:

1. You have a right to receive a copy of this notice upon the district's identification, evaluation, refusal to provide an evaluation, educational placement, denial of educational placement and any significant change in said placement of your child.
2. You have the right to an evaluation of your child if the district has reason to believe that your child has a mental or physical impairment that substantially limits learning or some other major life activity ...
 - a) Before the initial placement.
 - b) Before any subsequent significant change in placement.
3. You have the right to an opportunity to examine all relevant records for your child.
4. You have the right to an impartial hearing, with participation by you and representation by counsel, concerning the identification, evaluation or educational placement of your child.
5. You have the right to appeal the final decision of the impartial hearing officer to a court of competent jurisdiction.