

SECTION 504 OF THE REHABILITATION ACT

Section 504 of the Rehabilitation Act of 1973 as amended is a federal law that prohibits discrimination against persons with disabilities by entities who receive federal funds. Section 504 actually codified constitutional equal protection for the rights of individuals with disabilities. Section 504 was closely modeled upon civil rights legislation and is intended to offer individuals with disabilities equal opportunity to pursue employment, educational and recreational goals free of discrimination.

Section 504 states that "No otherwise qualified handicapped individual ...shall, solely by reason of his handicap, 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..."

The definition of a handicapped individual is a person who has a physical or mental impairment, which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment. The term "major life activities" is defined as caring for one's self, performing manual task, walking, seeing, hearing, speaking, breathing, learning and working.

Each federal agency has established regulations to govern Section 504 implementation in its respective programs. For example, regulations at 34 C.F.R. 104 apply to IDEA and other programs administered by the U.S. Department of Education. Individuals may be covered simultaneously by both IDEA and Section 504.

Section 504 protections are limited in that they only apply to programs or businesses that receive federal funds. The Americans with Disabilities Act (ADA), strengthened the antidiscrimination provisions of Section 504 by extending its coverage to all services provided by state and local governments and their agents, regardless of whether or not the programs receive any federal funds. See also "Americans with Disabilities Act", Appendix A, Page 130.

Although not specific to assistive technology, Section 504 has clear policy on nondiscrimination, access, and reasonable accommodation that provides support for access to assistive technology. The regulations of both Section 504 and the ADA emphasize that assistive technology must be provided as necessary to make reasonable accommodation in providing full access to people with disabilities to employment,

transportation, government funded services and public accommodations.

EDUCATION AND SECTION 504

There are extensive overlaps between IDEA and Section 504 regulations. Both IDEA and Section 504 create rights to a Free Appropriate Public Education (FAPE), an Individualized Education Plan, procedural safeguards, and least restrictive environment. There are, however, important differences.

According to IDEA, the term "children with disabilities" means those children evaluated in accordance with Regs. Secs. 300.530-300.534 as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf blindness, or multiple disabilities, and who because of those impairments need special education and related services. Section 504 will include all IDEA conditions as well as any physical or mental impairment, a far broader definition than is contained in IDEA.

Not only does the IDEA limit its coverage to listed conditions, it also requires there to be a link between the existence of the condition and the need for special education. Section 504 does not, rather it requires only that the impairment affect a major life activity.

Section 504 will cover children who are temporarily disabled, assuming it is severe enough, and long lasting enough to require special education or related services.

As noted above, IDEA states that "children with disabilities" are those who need special education and related services. The presence of the word "and" has the effect of excluding some children from coverage under IDEA. However, under Section 504 those children cannot be denied a FAPE. As long as they have a disability and need special education or related aids and services, they are entitled to have their needs met.

The Section 504 regulations, 34 C.F.R. Section 104.33(b)(1), defines "appropriate education" as ...the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped

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persons as adequately as the needs of nonhandicapped persons are met... Section 504 regulations focus on the child's needs as well as the adequacy of the program in comparison to the programs offered to others. Section 504 has at its heart an ongoing comparison between the programs, services and opportunities offered to children with handicaps, and those that are offered to non-handicapped children. IDEA states that "related services" are services that are required to assist a child with disabilities to benefit from special education. Section 504 makes no demand that a child even need special education. For this reason, related services do not have to allow the child to "benefit" from special education. Rather, the proof must establish that the service is needed to enable the child to have an educational program that is equally effective as that offered to other children.

Section 504 incorporates all the IDEA concepts in relation to FAPE. Section 504 will prohibit a school district from insisting that parents use their insurance proceeds to pay for related aids and services. It will also prohibit schools from denying children the opportunity to take home assistive technology devices if those devices are needed to enable those children to have an equal opportunity to participate in school.

Eligibility

To be eligible for protection under Section 504, an individual must meet the definition of a person with a disability. This definition is "Any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." Major life activities include self-care, performing manual task, seeing, hearing, speaking, breathing, learning, and walking. Section 504 covers only those persons with a disability who would otherwise be qualified to participate and benefit from the programs or other activities receiving federal financial assistance.

FOR 504 TECHNICAL ASSISTANCE CONTACT:

Each federal agency has established regulations to govern Section 504 implementation in its respective programs. These regulations will include procedural safeguards. Discrimination complaints should be filed with the federal agency or department,

which provides funding for the program in which discrimination is alleged to have occurred. If uncertain about the source of federal funding involved, an individual may file a complaint with the U.S. Department of Justice which will route the complaint to the appropriate federal agency.

U.S. Department of Justice Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, DC 20035-6738
(800) 514-0301 (ADA Information Line)
(800) 514-0383 (TDD)
To access publications on the ADA electronically:
(202) 514-6193 (electronic bulletin board)
www.usdoj.gov/crt/

The Client Assistance Program (CAP) can help with information, advocacy and appeals procedures regarding an individual's right under the Rehabilitation Act.

Client Assistance Program
James O. Sirmans, Director
Office of Handicapped Concerns
2401 NW 23rd Ste. 90
Oklahoma City, OK 73107-2423
(405) 521-3756 (Oklahoma City, voice)
(405) 522-6706 (TDD)
(800) 522-8224 (statewide, voice/TDD)
FAX: (405) 522-6695
www.ohc.state.ok.us/cap.htm

The U.S. Department of Education's (ED) Office for Civil Rights (OCR) enforces Title II of the ADA and Section 504 of the Rehabilitation Act of 1973.
Office for Civil Rights, Region VI
U.S. Department of Education
8930 Ward Parkway, Suite 2051
Kansas City, MO
(816) 268-0550 (TDD)
(800) 437-0833 (TDD)
FAX: (816) 823-1404

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Office for Civil Rights
Customer Service Team
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