

## CHAPTER 7

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# Section 504 of the Rehabilitation Act of 1973

In this chapter, you will learn about the rights under Section 504 of the Rehabilitation Act, as contrasted with the rights under the Individuals with Disabilities Education Act (IDEA). You will learn that Section 504 does not require public schools to provide a special education program that is individualized to meet the needs of a child with a disability, with the goal of enabling the child to become independent and self-sufficient. You will also learn that the child with a Section 504 Plan<sup>1</sup> does not have the legal protections available to the child who has an IEP under the IDEA.

Except for accessibility of buildings, and modifications and accommodations in testing, Section 504 provides fewer protections and benefits to children with disabilities than IDEA. You will find selected portions of Section 504 at the end of this chapter.

The key portion of **Section 504 of the Rehabilitation Act** states:

No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely **by reason of her or 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 or under any program or activity conducted by any Executive agency or by the United States Postal Service . . .<sup>2</sup>

One important benefit of Section 504 relates to legal remedies if a school district discriminates, excludes, or retaliates against a parent, child or school district employee for exercising their rights.<sup>3</sup> In addition, a complaint to the Office of Civil Rights under Section 504 can be more effective than a complaint to the state department of education under IDEA.

## Purpose

Section 504 is a broad *civil rights* law. The law applies to students and other individuals with disabilities, parents, and also to school district employees. A Section 504 case is often known as 1983 action.<sup>4</sup>

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1 A "Section 504" Plan does not have to be written and does not require parental agreement. See the 504 Regulations at 34 CFR 104.31-104.39 at [www.wrightslaw.com/law/504/sec504.regs.pdf](http://www.wrightslaw.com/law/504/sec504.regs.pdf). See the sample 504 Plan at [www.dredf.org/section504.html](http://www.dredf.org/section504.html) (Retrieved October 9, 2006)

2 29 U. S. C. § 794(a)

3 For cases filed against school districts by teachers and other school personnel, go to [www.wrightslaw.com/info/sec504.index.htm](http://www.wrightslaw.com/info/sec504.index.htm)

4 Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . . (42 U. S. C. § 1983)

The purpose of Section 504 is to protect individuals with disabilities from discrimination for reasons related to their disabilities. Prohibited discrimination includes exclusion from school activities, the unnecessary provision of unequal or separate services, and disability harassment. Examples include not allowing children with disabilities to participate in school field trips, sending children with disabilities home from school earlier than nondisabled children, and retaliating against parents and school employees who advocate for children with disabilities.

The purpose of the Individuals with Disabilities Education Act is “to ensure that all children with disabilities have available to them a free, appropriate education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living . . .”<sup>5</sup> Section 504 does not ensure that the child with a disability will receive an individualized educational program designed to meet the child’s unique needs and provide the child with educational benefit, with the goal of preparing the child for “further education, employment and independent living.”

## Protection from Discrimination

Section 504 protects individuals with disabilities from discrimination. Children who receive special education services under IDEA are automatically protected by Section 504. The child with a disability who has a 504 Plan does not have the same procedural protections available to children with disabilities and their parents under IDEA.

## Accommodations, Modifications and Services

Under Section 504, the child with a disability may receive accommodations and modifications that are not available to nondisabled children. All children with disabilities who receive special education and related services under IDEA are entitled to these accommodations, modifications and services.

## Eligibility

To be eligible for protections under Section 504, an individual must have a physical or mental impairment that substantially limits at least one major life activity. Examples of major life activities are walking, seeing, hearing, speaking, breathing, reading, writing, performing math calculations, working, caring for oneself, performing manual tasks, and other activities.

If the child has an “impairment” that “substantially limits” one or more major life activities (like reading, writing, performing math calculations, walking, hearing, or self care), but does not *need* special education services, the child is eligible for protections under Section 504.

Section 504 requires the school to perform an evaluation that draws information from a variety of sources. The school may develop a 504 Plan but the plan does not have to be written. Section 504 does not require a meeting before a change in placement.

## Confusion about Rights and Benefits

Some parents and educators believe that a child who is eligible for special education and related services under IDEA must be placed in special education classes, while a child with a 504 Plan may remain in regular education classes. Relying upon this inaccurate information, school personnel often advise parents that their children will be better served with a 504 Plan, not an IEP.

Do you remember what IDEA says about educating children with disabilities in the “least restrictive environment?” Children with disabilities are to be educated with children who are not disabled “to the maximum extent

<sup>5</sup> See Purposes of IDEA in Section 1400(d).

appropriate.” Educating children in special classes, separate schools, or removing children with disabilities from the regular education environment should only occur when the school cannot educate the child in regular classes with supplementary aids and services.

Remember: Special education is a service, not a place or placement.<sup>6</sup>

### ***Access v. Educational Benefit***

To clarify the differences between the laws, change the facts. Assume that your special needs child uses a wheelchair. Under Section 504, your child shall be provided with **access to an education**. Reasonable modifications may be made to the school building. Your child may receive “reasonable” accommodations when taking tests. The child may have the services of an aide to assist in the bathroom. The purpose of these modifications, accommodations and services is to provide the child with access to an education.

Under Section 504 regulations, a “free appropriate public education” is “the provision of regular or special education and related aids and services that . . . are designed to meet individual educational needs of persons with disabilities **as adequately as the needs of persons without disabilities are met** . . .” (34 C.F.R. § 104.33(b)(1))

Now assume that your child who uses a wheelchair also has neurological problems that adversely affect the child’s ability to learn. Under the IDEA, in addition to access, your child is entitled to an education that is designed to meet the child’s unique needs and from which the child receives educational benefit. Under Section 504, the child has access to the same free appropriate public education that is available to children who are not disabled.

### ***Discipline***

Children with Section 504 Plans and those with IEPs have some protections in school discipline incidents. If the child with a Section 504 Plan misbehaves and the school decides the child’s behavior is not a manifestation of the disability, the school can expel the child, just as they can expel a nondisabled child. Under IDEA, the school must continue to provide the child with a free, appropriate education, even if the child is suspended or expelled from school.

### ***Procedural Safeguards***

Section 504 does not include a clearly established “Prior Written Notice” requirement.<sup>7</sup> In contrast, IDEA includes an elaborate system of procedural safeguards designed to protect the child and parents. These safeguards include written notice before any change of placement and the right to an independent educational evaluation<sup>8</sup> at public expense. Section 504 does not include these protections.

### ***Impartial Hearings***

Section 504 and IDEA require school districts to conduct impartial hearings when parents disagree with their child’s identification, evaluation, or placement. Section 504 also permits a hearing to review alleged discrimination. Under Section 504, the parent has an opportunity to participate and obtain representation by counsel. The details are left to the discretion of the school district and hearing officer. Contrast this with the detailed procedural safeguards in Section 1415 of the Individuals with Disabilities Education Act.

<sup>6</sup> See Regulation 300.39.

<sup>7</sup> See Regulation 300.503.

<sup>8</sup> See Regulation 300.502.

## In Summation

In this chapter, you learned about Section 504 of the Rehabilitation Act and how it differs from the Individuals with Disabilities Education Act.<sup>9</sup> You learned that Section 504 focuses on accommodations, modifications, services, and improved building accessibility to provide access to education.

You learned that Section 504 does not require public schools to provide an educational program that is individualized to meet the needs of a disabled child with the goal of enabling the child to become independent and self-sufficient. You learned that the child with a Section 504 Plan does not have the protections that are available to the child who has an IEP under the IDEA.<sup>10</sup> To learn more about Section 504, go to [www.wrightslaw.com/info/sec504.index.htm](http://www.wrightslaw.com/info/sec504.index.htm) or enter the term into the search box at [www.wrightslaw.com](http://www.wrightslaw.com)

You will find key portions of Section 504 of the Rehabilitation Act below.

In the next chapter, you will learn about important features in the No Child Left Behind Act and how Congress aligned the Individuals with Disabilities Act with the No Child Left Behind Act.

## Section 504 of the Rehabilitation Act of 1973 29 U. S. C. 701 *et seq.*

### 29 U. S. C. § 701. Findings; purpose; policy

(a) **Findings.** Congress finds that--

- (1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;
- (2) individuals with disabilities constitute **one of the most disadvantaged groups in society**;
- (3) **disability is a natural part of the human experience** and in no way diminishes the **right of individuals** to
  - (A) live independently;
  - (B) enjoy self-determination;
  - (C) make choices;
  - (D) contribute to society;
  - (E) pursue meaningful careers; and
  - (F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;
- (4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce investment systems under title I of the Workforce Investment Act of 1998 [29 U. S. C. 2801 *et seq.*] that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under title I, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;
- (5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and
- (6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to-

<sup>9</sup> See "Comparison of IDEA, Section 504 and ADA" at [www.cde.state.co.us/cdesped/download/pdf/504Comparison.pdf](http://www.cde.state.co.us/cdesped/download/pdf/504Comparison.pdf) and "An Overview of ADA, IDEA and Section 504" at <http://ericec.org/digests/e606.html> (Retrieved on October 9, 2006)

<sup>10</sup> To learn more about Section 504 and discrimination, go to [www.wrightslaw.com/info/sec504.index.htm](http://www.wrightslaw.com/info/sec504.index.htm) or enter the terms into the search box at [www.wrightslaw.com](http://www.wrightslaw.com)