



**Section 504 Is Not the
Consolation Prize:
Understanding How this Anti-
Discrimination Law Is More
Than a One-Size-Fits-All
Designation for Students with
social, emotional, functional,
and academic deficits.**

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GJ&A
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Section 504

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What is Section 504

- Section 504 is a federal law (Rehabilitation Act of 1973) that prohibits discrimination based on a student's disability, and demands that the needs of students with disabilities be met as adequately as the needs of non-disabled students are met.
- “No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.”
- 34 CFR § 104.4 (a).

What is Section 504

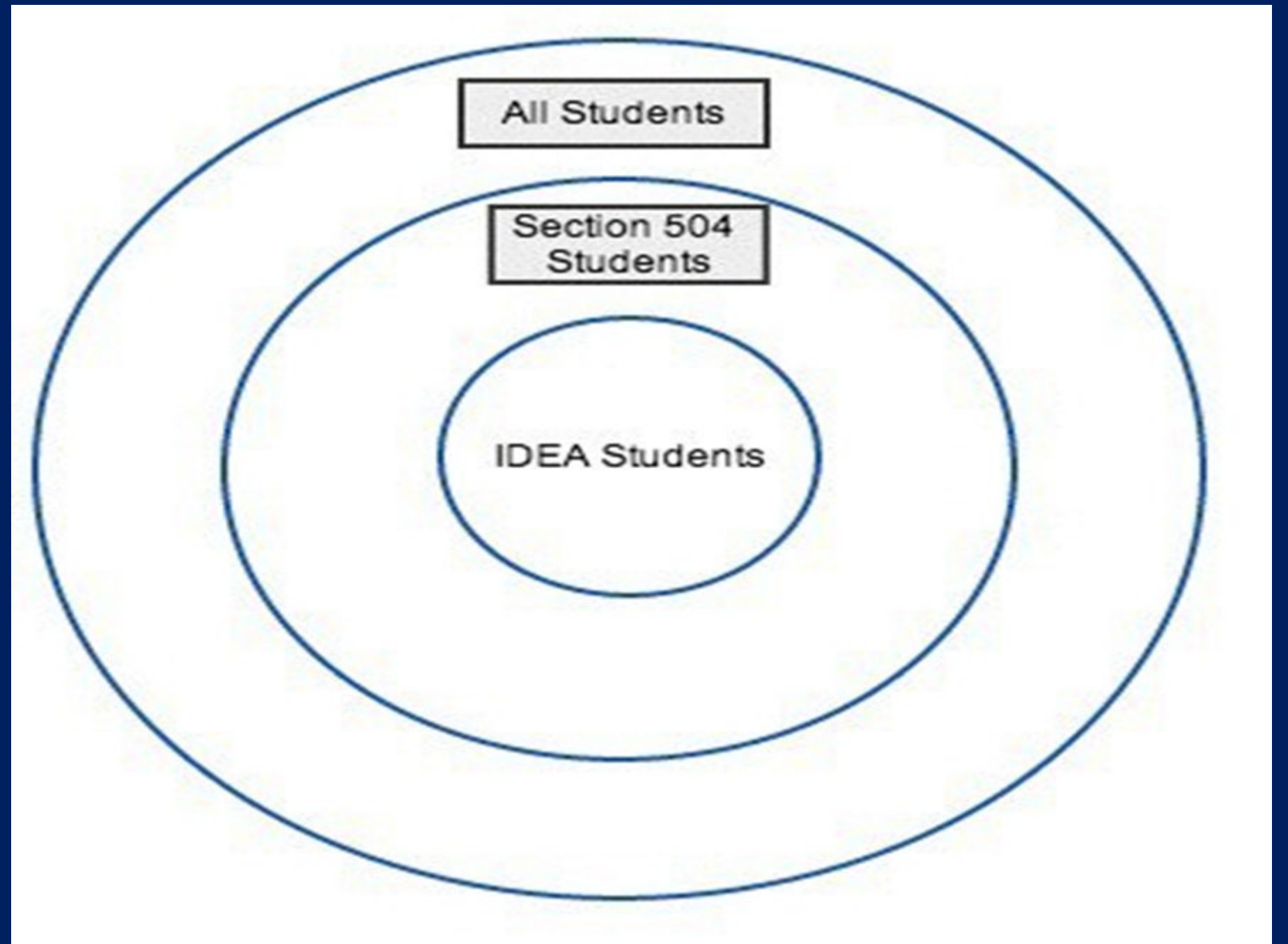
- Section 504 also guarantees a free appropriate public education (FAPE). Specifically, Section 504 requires that:
- “a recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified [a person with a disability] who is in the recipient’s jurisdiction, regardless of the nature or severity of the students [disability].”
- 34 CFR § 104.33(a).

Americans with Disabilities Act

- Signed into law in 1990.
- The ADA applies Section 504 nondiscrimination concepts to the private sector (places of public accommodation, private employers with a certain number of employees, etc.) and to public entities that do not receive federal financial assistance.

Eligibility Definition

- Students with disabilities that are protected under the IDEA are afforded the most protection.
- All students with disabilities eligible under Section 504.



Section 504 vs. IDEA: Broad vs. Narrow

- Section 504 covers more students than the Individuals with Disabilities Education Act (IDEA).
 - In order to establish eligibility under the IDEA, the student must have one of the 13 specifically enumerated disabilities and require special education.
- Section 504 only requires that a physical or mental impairment substantially limit a major life activity.

IDEA Eligibility

- Autism
- Deaf-blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

Section 504 Eligibility

A student is eligible under Section 504 if the student has a “physical or mental impairment that substantially limits one or more major life activities of such individual; has a record of such a impairment; or [is being] regarded as having such impairment.”

“Major Life Activity”

Saginaw City Schs. (MI), 116 LRP 13436 (OCR 12/17/15)

Section 504 Eligibility is Expansive NOT Exhaustive

There are no specific impairments mentioned, and the regulation does not limit the range of potential impairments.

Section 504's Broad Coverage

“The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.”

42 USC § 12102(4)(a)

Physical Impairment

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, genitourinary; hemic and lymphatic; skin; and endocrine.

34 CFR § 104.3(j)(2)(i)

Mental Impairment

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Question

- Parent drops of enrollment paperwork with a note from a physician written on a prescription pad which states:
- “To whom it may concern, Billy was born with one testicle.”
- Based on this note is Billy eligible for 504 protections?

Physical Impairment

Physical impairment means 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, genitourinary; hemic and lymphatic; skin; and endocrine.

Substantial Limitation

In considering whether an impairment substantially limits a major life activity, OCR has suggested that districts consider:

- The nature and severity of the impairment;
- The duration or expected duration of the impairment; and
- The permanent, long-term impact or expected impact of the impairment.

Substantial Limitation

*Snowflake (AZ) Unified Sch. Dist., 102 LRP 38676
(OCR 03/24/98)*

Don't Overthink It

- The “substantial information” determination should not demand extensive analysis.
- A simple comparative analysis can help establish a substantial limitation. Simply compare how a student with an impairment performs a major life activity to how the average student performs the same major life activity.
- For example, deafness substantially limits the major life activity of hearing.

Substantial Limitation

- No mitigating measures!
- When considering whether an impairment substantially limits a major life activity, Districts cannot consider the effects of mitigating measures, such as medication.
- The impairment must substantially limit the major life activity without regard for the ameliorative effects of these measures.

Substantial Limitations (cont.)

Mitigating measures include things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. However, ordinary eyeglasses and contact lenses are not considered “mitigating measures.”

42 USC § 12102(4)(E)(i).

Substantial Limitations (cont.)

Note too that whether an impairment is in remission is irrelevant. An impairment is a disability if, when active, it substantially limits a major life activity.

Dear Colleague Letter, 58 IDELR 79 (OCR 2012).

Substantial Limitations (cont.)

Definition Takeaways:

- **Mitigating measures are irrelevant:** Districts need to put aside the ameliorative effects of these measures to examine whether there is a substantial limitation.
- **Disability need not be active:** Students with recurring conditions could qualify under Section 504 regardless of whether they are currently experiencing symptoms.
- **Substantial limitation need not be severe:** “Substantial limitation” should be defined broadly.

Major Life Activity

- “Include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”
- “A major life activity also includes the **operation** of a major bodily **function**, including but not limited to, **functions** of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive **functions**.”

42 USC § 12102(2)(A), (B).

Record of Such an Impairment

More often found in employment issues:

- Disabled veterans
- Individuals returning to work from injuries or illness

Can be associated with students:

- Restorative surgeries
- Autism Spectrum Disorder

Regarded as Having Such an Impairment

An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

Ryan White (1971-1990)

- Ryan White at age 13, contracted HIV through a tainted blood-clotting agent used to treat his hemophilia.
- Western Schools Corp. Superintendent J.O. Smith officially barred White from attending Western Middle School near Kokomo, Indiana saying the health risk for other children was too great.

Superintendent's Statement

“With all the things we do and don't know about AIDS, I just decided not to do it,” Smith said. “There are a lot of unknowns and uncertainties, and then you have the fear that would generate among classmates.”

(United Press International, April 8, 1990)

Small Group Discussion

1. Do you see a problem with the Superintendent's statement?
2. Was it discrimination under Section 504?
3. Why?

But my child has...

- A parent tells a teacher that the child has dyslexia and needs a Section 504 Plan.
- What should the teacher do?

Dyslexia

- When the 504 committee determines if the student is dyslexic they must also determine if the child should be served under Section 504.
- Merely having dyslexia does not qualify an individual as 504.

The student must have...

Teacher reports to the principal or Section 504 coordinator that the student needs a Section 504 because...

- The student is depressed because his parents are getting a divorce.

What do you do?

- The student did not qualify for special education because there was evidence of a disability interfering with the student's ability to access their education so the student should be on a Section 504 plan.

Section 504 is NOT a Consolidation Prize



504 Plan = Leveling the Playing Field

- Section 504 is an anti-discrimination, civil rights statute that requires school districts to meet the needs of students with disabilities as adequately as their typically developing peers.
- The question is: What accommodations or services does the child require to access their education at the equivalent level of their typical developing peers?

Free Appropriate Public Education

Meeting individualized needs of students

- Begin with the evaluation of the student.
- Determine the student's disability-related needs.
- Document in 504 Plan.
 - Create a written 504 Plan.

Free Appropriate Public Education (cont.)

Least Restrictive Environment *Generally Speaking*

- Like IDEA, Section 504 requires that a school place a student with a disability in a classroom with non-disabled peers to the maximum extent possible.
- First consider placement in a general education classroom with the use of supplementary aids and services; if not appropriate, then explore other placement options.

Free Appropriate Public Education (cont.)

Least Restrictive Environment

- “A recipient shall place a handicapped person (person with a disability) in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.”

34 CFR § 104.64(a).

Free Appropriate Public Education (cont.)

In the Section 504 context, “placement” generally means the regular education classroom with individually planned modifications. It does not literally mean taking the child out of the regular classroom and putting him someplace else. Students served under Section 504 will most likely not demand high levels of modification or separate classes.

Section 504

Procedural Requirements

- Notice to parents
 - Which includes child find, notice of parent rights, prior notice of evaluations and meetings, and notice of the results/actions taken at 504 Committee meetings.
- An opportunity to examine relevant records
- Right to a due process hearing
- Right to a review of a due process hearing decision

*Regulations do not require that schools invite parents to Section 504 Committee meetings, but it is highly recommended that you invite parents as a matter of policy and good parental relations.

Section 504 Procedural Requirements

- Additional Section 504 procedural requirements:
 - Must designate responsible employee (504 Coordinator)
 - Adopt 504 grievance procedures
- Procedural flaws do not automatically constitute denial of FAPE.

Evaluation is **REQUIRED**

An evaluation under Section 504 is the collecting, gathering, and interpreting of data from a variety of sources about the student's educational functioning. Data can include aptitude and achievement tests, teacher recommendations, physical and health information, adaptive behavior data, discipline information, parent input, privately-obtained data, prior IDEA evaluations, new evaluations, observations, grade and progress reports, and any other relevant information.

Key Points

- A 504 accommodations plan should not be considered a consolation for not being eligible for special education.
- The information gathered as part of the special education evaluation may be used in determining eligibility for a 504.
- A 504 accommodations plan is a planned, written response to a student's disability that allows a level playing field for that student.
- The plan should provide the student the ability to access the educational programs and services as his non-disabled peers do.
- The student does not have to meet the requirements of special education qualifications to be eligible for a 504 accommodation plan.

THE 504 PLAN

Eligibility Considerations

- Our evaluation
- Standardized scores
- Report cards
- Referral forms
- Disciplinary records
- Teacher reports and observations
- Prior special education testing results
- Prior school district records
- Attendance
- Parent interview and documents
 - Medical records
- School health records
- Counselor's reports
- Evaluations privately performed by parents
- Checklist and instruments to determine potential attentional problems
- RTL

Eligibility Considerations

A note on a prescription pad is not enough

Accommodations and Modifications

- DO NOT mark every box.
- DO NOT mark what we marked last year.
- DO NOT mark boxes solely because a parent asked for it.

Parents Matter
Foster a Positive Relationship

Parents are People Too!

- Listen to the parents.
- Ask questions.
- Be calm and courteous even when parents or advocates are being adversarial.
- Be student-centered.
- Think about how others may interpret your words before you speak.
- Do not create an “us versus them” mentality.
- We all have schedules and there is never enough hours in the day but during the 504 meeting take time for the parents.
- Be respectful.

Parents are People Too (cont.)

If you are not happy your kids goes to school here, you can leave.



I can see that you have questions and concerns. Let's walk through your questions together and see if I can add clarity.

How to Handle Parent Requests

- Clearly document all parent requests.
- Document responses to parent requests.
 - Grant parent requests and document reasons.
 - Deny parent requests, provide written notice.
 - When we need more information it's permissible to tell the parent that we will review the information and reconvene to address the request.

Avoid Predeterminations in the 504 Meeting

Section 504 Meetings

DO:

- Review progress
 - Work portfolio
 - STAAR scores/ITBS scores
 - Other standardized tests
- Review behavior
 - Conduct grades
 - Discipline File
 - Behavior logs
 - Teacher documentation
- Review other Factors
 - Poor attendance

Section 504 Meetings (cont.)

DO:

- Respond to Parent's Request.
 - “I understand you are requesting a full time 1:1 note taker for Susie. We can address Susie's attention needs by...”
- Respond to parent's concerns and/or fears.
- Focus on the student needs – not LEA resources.
- Follow-up/do what you promised after the meeting.

504 Document Notes

- Introductions made.
- Parent procedural rights provided.
- Purpose of meeting conveyed.
- Then, depending on purpose...
 - Evaluations reviewed.
 - Review progress from last 504 meeting.
 - Discuss and document placement, services, and accommodations.
 - Confirm with parent that they understand of District's offer of FAPE.
 - Discuss or develop data collection.

What YOU can do to avoid litigation

- Make an offer of FAPE based on the student's strengths and needs – not District resources or parent demands.
- Explain to the parents in as much detail as necessary the offer of FAPE and if they do not understand explain it again...and again...and again.
- Clearly document the complete offer of FAPE in the 504 Plan.
- Do more than check the box; we must explain why we offered or did not offer what we did.
- Use the 504 Document to explain any areas which require more detail.
- Section 504 software can be challenging, so if the software is not cooperating seek help to ensure the offer of FAPE is documented.

**Avoiding Litigation:
If it isn't in writing,
it didn't happen.**

Differences between Section 504 and IDEA

- Broader definition of disability under Section 504.
- In many cases Section 504 and IDEA will overlap.
- Some students with disabilities may only be eligible for 504 services.
- IDEA contains more stringent procedural requirements – adhering to IDEA procedure (for timeline, notice, etc) will usually satisfy Section 504 requirements.
- Section 504 requirements apply outside the classroom as well, including counseling, health services, club activities and recreational activities, among others. 34 CFR § 104.37

IDEA vs. 504

Scope of Coverage	Specific, narrower	Broad
Definition of Disability	<p>Two parts:</p> <p>1) Must meet one (or more) of 13 eligibility categories:</p> <ul style="list-style-type: none"> • Autism • Deafness • Deaf-Blindness • Emotional Disturbance • Hearing Impairment • Intellectual Disability • Multiple Disabilities • Orthopedic Impairment • Other Health Impairment • Specific Learning Disability • Speech or Language Impairment • Traumatic Brain Injury • Visual Impairment, including blindness <p>2) And, must require special education services because of condition</p>	<p>Student with a disability includes a student who:</p> <ul style="list-style-type: none"> • Has a physical or mental impairment that substantially limits one or more major life activities • Has a record of such an impairment, or • Is regarded as having such an impairment <p>Important notes:</p> <ul style="list-style-type: none"> • Most cases will involve actual disability • Don't consider mitigating measures, like medication, when evaluating disability • For episodic conditions, evaluate condition when it is active, not in remission
Definition Type	Exhaustive – student must have one of the enumerated disability types	Expansive – no specific impairments listed, and definition interpreted broadly

Summary of Key Issues

Section 504 Substantive FAPE:

- Focus on individual needs of student
- Placement in least restrictive environment.

Section 504 Procedural Requirements:

- Develop and follow procedures that address educational setting, placement, and procedural safeguards.
- Designate a responsible employee as the 504 Coordinator.

Section 504 applies to all school programs and services, in and out of the classroom, including off-campus school-sponsored activities.

Question & Answer



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