

Section 504

Charter School Training

September 14, 2017 – Indianapolis, IN

September 21, 2017 – Merrillville, IN



Working Together for Student Success

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 (Sec. 504)

The Americans with Disabilities Act (ADA)

The Americans with Disabilities Act Amendments Act of 2008



Civil Rights/Disability Rights

PL 93-112; Rehabilitation Act of 1973

- First federal civil rights law specifically aimed at protecting the rights of individuals with disabilities.
- Prohibits discrimination on the basis of disability in programs that receive federal financial assistance.



P.L. 94-142; The Education for All Handicapped Children Act (1975)

Congress's definitive response to the growing concern that children with disabilities who were of school age were being systematically excluded outright from access to schools or were receiving grossly inadequate services.



THE AMERICANS WITH DISABILITIES ACT, 1990

The ADA was modeled after Sec. 504. The ADA, like Sec. 504, is a nondiscrimination act. The ADA extended civil rights protection to private sector employment, all public services, public accommodation, transportation, and telecommunications.



SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 USC §794

No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS § 705(20)], 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.



SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 USC §794

(b) “Program or activity” defined. For the purposes of this section, the term “program or activity” means all of the operations of—

(2) (B) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 USCS § 7801]), system of vocational education, or other school system;



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

§ 104.2 Application

This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Definitions

§ 104.3(j) Handicapped person

- (1) Handicapped persons means 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.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Definitions

§ 104.3(j) Handicapped person

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means

(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 intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Definitions

§ 104.3(j) Handicapped person

(2) As used in paragraph (j)(1) of this section, the phrase:

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Definitions

§ 104.3(I) Qualified handicapped person means:

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person

(i) of an age during which nonhandicapped persons are provided such services,

(ii) of any age during which it is mandatory under state law to provide such services to handicapped persons,

or

(iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

§ 104.4 Discrimination prohibited.

(a) General. 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.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

§ 104.4 Discrimination prohibited.

(b) Discriminatory actions prohibited.

Recipient may not, on the basis of disability:

- Deny the opportunity to participate or benefit.
- Afford an opportunity to participate that is not equal to that afforded to others.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

§ 104.4 Discrimination prohibited.

(b) Discriminatory actions prohibited.

Recipient may not, on the basis of disability:

- Provide an aid, benefit or service that is not as effective.
- Provide different or separate aids or benefits unless necessary to provide an individual with a disability services that are as effective.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

§ 104.4 Discrimination prohibited.

To be equally effective, aids, benefits and services are not required to produce identical results or level of achievement, but must afford an individual with a disability an equal opportunity to obtain the same result in the most integrated setting appropriate to the person's needs.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Designation of Responsible Employee and Adoption of Grievance Procedures § 104.7

- (a) Designation of responsible employee.**
- (b) Adoption of grievance procedures.**



SELECTED SECTION 504 REGULATIONS 34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance from the U.S. Department of Education.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.32 Location and notification.

A recipient must annually undertake to identify and locate every student with a disability residing in the recipient's jurisdiction who is not receiving a public education and to notify the parents or guardians of the recipient's responsibilities under Sec. 504.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a **free appropriate public education** to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.33 Free appropriate public education.

(b) Appropriate education.

(1) The provision of an appropriate education is the provision of regular or special education and related aids and services that

(i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and

(ii) are based upon adherence to procedures that satisfy the requirements of §§104.34, 104.35, and 104.36.



SELECTED SECTION 504 REGULATIONS 34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.33 Free appropriate public education.

(b) Appropriate education.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Acts is one means of meeting the standard established in paragraph (b)(1)(i) of this section.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.33 Free appropriate public education.

(c) Free education.

- Without cost, except for those fees that are imposed on nondisabled students or parents.
- Transportation. At no greater cost than incurred by nondisabled students.
- Residential. If required to provide a FAPE, placement, including non-medical care and room and board, provided at no cost to parent or guardian.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

Section 504 does not require districts to pay “fees that are imposed on nondisabled persons or their parents or guardians.” 34 CFR 104.33(c). However, districts must provide special education and related services at no cost. See, e.g., *Rose Hill (KS) Pub. Schs., U.S.D. #394*, 46 IDELR 290 (OCR 2006) wherein OCR explained that the regulations implementing Section 504 and the ADA require districts to provide all necessary services – including evaluations – free of charge to students with disabilities



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.34 Educational setting.

(a) Academic setting. A recipient shall educate each student with a disability with students who are not disabled to the maximum extent appropriate. A student shall be placed in the general education environment unless it is demonstrated that education in general education setting with the use of supplementary aids and services cannot be achieved satisfactorily.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.34 Educational setting.

(b) Nonacademic settings. A student with a disability shall participate with nondisabled students, to the maximum extent appropriate to the needs of the student with disabilities, in nonacademic and extracurricular services and activities, including meals, recess, physical education, recreational activities, clubs and special interest groups, and other activities.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.34 Educational setting.

(c) Comparable facilities. If a recipient operates a separate facility for individuals with disabilities it shall ensure that the facility and services and activities are comparable to other facilities, services and activities for nondisabled students.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient shall conduct an evaluation of any student who, because of disability, is believed to need special education or related services before the initial placement of the student in general or special education and any subsequent significant change in placement.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.35 Evaluation and placement.

(b) Evaluation procedures. A recipient shall establish procedures for evaluation to ensure that:

- Tests and evaluation materials have been validated for the specific purpose for which they are used.
- Tests and evaluations are administered by trained personnel in conformance with instructions.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.35 Evaluation and placement.

(b) Evaluation procedures. A recipient shall establish procedures for evaluation to ensure that:

- Tests and evaluation materials are tailored to assess specific areas of educational need and not IQ.
- Tests and evaluations are selected to ensure that the test accurately reflects the student's aptitude or achievement rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are what the test purports to measure).



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.35 Evaluation and placement.

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall

- Draw upon information from a variety of sources, including: aptitude and achievement tests; teacher recommendations; physical condition; social or cultural background; and adaptive behavior.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.35 Evaluation and placement.

- Establish procedures to ensure that all information is documented and carefully considered.
- Ensure the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options, and in the LRE.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.35 Evaluation and placement.

(d) Reevaluation. A recipient shall establish procedures for periodic reevaluation of students who have been provided special education and related services. A procedure consistent with the IDEA is one means of meeting this requirement.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.36 Procedural safeguards. A recipient shall establish a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.



SELECTED SECTION 504 REGULATIONS 34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.36 Procedural safeguards.

Compliance with the procedural safeguards of the IDEA is one means of meeting this requirement.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.37 Nonacademic services.

(a) General. A recipient shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.37 Nonacademic services.

(a) General. Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.37 Nonacademic services.

(b) Counseling services. A recipient that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.37 Nonacademic services.

(c) Physical education and athletics. A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of §104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.38 Preschool and adult education programs.

A recipient that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.39 Private education programs.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in §104.33(b)(1), within the recipient's program.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.39 Private education programs.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.



SELECTED SECTION 504 REGULATIONS

34 CFR PART 104

Subpart D -- Preschool, Elementary, and Secondary Education

§104.39 Private education programs.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of §§104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§104.34, 104.37, and 104.38.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

Effective January 1, 2009

The ADAAA expands the ADA's non-exhaustive list of major life activities by providing nonexhaustive lists of general activities and major bodily functions, and bars schools from considering the ameliorative effects of most mitigating measures in determining whether a disability is substantially limiting.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

Effective January 1, 2009

It also provides that an impairment that is episodic or in remission is a disability if, when active, it is substantially limiting.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

42 U.S.C. § 12102

(1) Disability. The term “disability” means, with respect to an individual—

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

42 U.S.C. § 12102

(2) Major life activities.

- (A) In general. For purposes of paragraph (1), major life activities 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.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

42 U.S.C. § 12102

(2) Major life activities.

- (B) Major bodily functions. For purposes of paragraph (1), 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.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA) *42 U.S.C. § 12102*

(3) Regarded as having such an impairment.

For purposes of paragraph (1)(C):

- (B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

42 U.S.C. § 12102

(4) Rules of construction regarding the definition of disability. The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

- (A) 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.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

42 U.S.C. § 12102

- (B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
- (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.



Americans with Disabilities Act Amendments Act of 2008 (ADAAA) *42 U.S.C. § 12102*

- (E) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as –
 - Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;



Americans with Disabilities Act Amendments Act of 2008 (ADAAA) *42 U.S.C. § 12102*

- (E) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as –
 - Use of assistive technology;
 - Reasonable accommodations or auxiliary aids or services; or
 - Learned behavioral or adaptive neurological modifications.



**Americans with Disabilities Act
Amendments Act of 2008 (ADAAA)**
42 U.S.C. § 12102

Dear Colleague Letter
58 IDELR 79 (OCR 2012)



Dear Colleague Letter 58 IDELR 79 (OCR 2012)

Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

- Broad coverage.
- May need to reevaluate.
- An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting.



Dear Colleague Letter 58 IDELR 79 (OCR 2012)

Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

- “Substantially limits” shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses.
- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity.



Dear Colleague Letter 58 IDELR 79 (OCR 2012)

Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

- “Substantially limits” shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses.
- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity.



Dear Colleague Letter
58 IDELR 79 (OCR 2012)

Q5: Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II?

- Yes, if those policies and procedures do not implement the Amendments Act's new legal standards.



Dear Colleague Letter
58 IDELR 79 (OCR 2012)

Q6. Does the Amendments Act address the "major life activities" referred to in the Section 504 and Title II regulations?

- Yes. The Amendments Act contains two nonexhaustive lists of major life activities – expanding the list of examples set forth in the regulations, and providing examples of “major bodily functions.”



Dear Colleague Letter
58 IDELR 79 (OCR 2012)

Q7: Is learning the only major life activity that a school district must consider in determining if a student has a disability under Section 504 and Title II?

- No. A student has a disability under Section 504 and Title II if a major life activity is substantially limited by his or her impairment.



ADHD OR OTHER DIFFICULT TO PLACE DISABILITIES

- Asthma
- Attention deficit disorder or attention hyperactivity disorder
- Diabetes
- Epilepsy
- A heart condition
- Hemophilia
- Lead poisoning
- Leukemia
- Nephritis
- Rheumatic fever
- Sickle cell anemia
- Tourette syndrome



ELIGIBLE UNDER BOTH SEC. 504 AND THE IDEA



ELIGIBLE UNDER BOTH SEC. 504 AND THE IDEA

Frequently Asked Questions About Section 504 and the Education of Children with Disabilities, 111 LRP 7640 (OCR 3-17-11)

- Q 36. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?
- A 36. No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.



QUESTIONS?

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