

OVERVIEW OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Introduction

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a civil rights statute that prohibits discrimination/harassment on the basis of a disability in any program or activity receiving federal financial assistance. In particular, Section 504 provides that:

No otherwise qualified individual with a disability in the United States...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....

29 U.S.C. § 794(a)(1973).

The Section 504 regulations require a school district to provide a “free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability. FAPE consists of

communicating, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504.

The protections of Section 504 extend to individuals who satisfy the eligibility requirements of Section 504. At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process.

Section 504 requires the use of evaluation procedures that ensure that children are not misclassified; unnecessarily labeled as having a disability; or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials. If a school district re-evaluates a student in accordance with the Section 504 regulation at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons, who because of disability, need or are believed to need special instruction or related services.

Definitions to Assist in Understanding Section 504

The United States Department of Education under 34 Code of Federal Regulations (C.F.R.) §104.3 provides the following definitions to assist in understanding Section 504:

- A. “Qualified disabled person”** with respect to a public preschool, elementary, secondary, or adult education services means an individual with a disability who is a resident of the school district and who is (i) of an age during which non-handicapped 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) an individual to

any of these characteristics also has a physical or mental disability, the person may be included within the definition of an individual with a disability.

C. **“Physical or mental 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; genito-urinary; skin; and endocrine; or