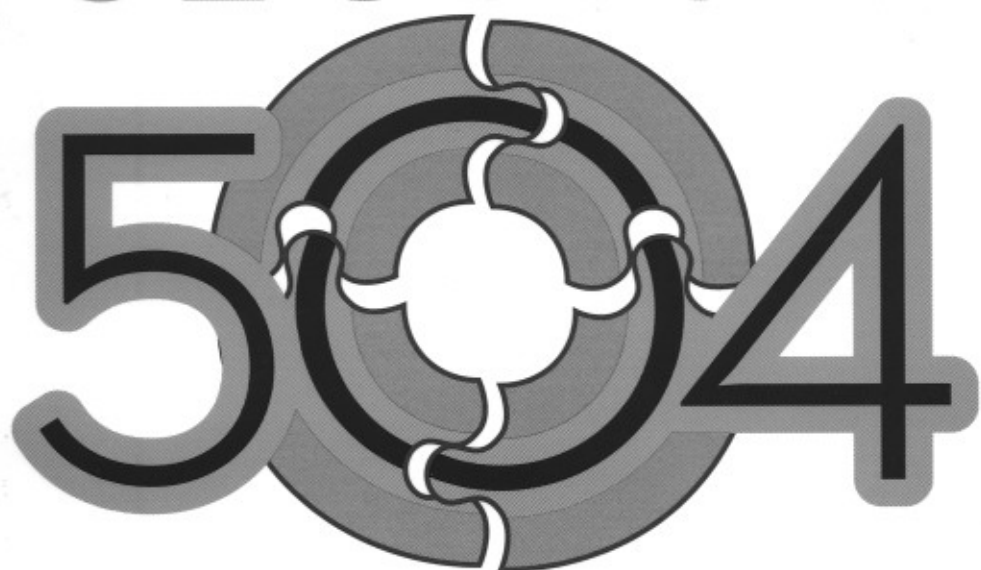


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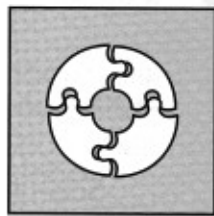


AND PUBLIC SCHOOLS

A Practical Guide for Determining Eligibility, Developing
Accommodation Plans, and Documenting Compliance

SECOND EDITION

Introduction



Chapter 1

Section 504 of the Rehabilitation Act (P.L. 93-112) was passed in 1973. The purpose of the act was to prevent discrimination against individuals with disabilities by entities that receive federal funds. Although the legislation originally focused on discrimination in employment settings, it was amended shortly after its passage to include education. Public schools that receive any form of federal funding must comply with the provisions of Section 504. Section 504 is basic civil rights legislation for individuals with disabilities. It prohibits discrimination against individuals with disabilities who are “otherwise qualified” to participate in various activities.

Section 504 and Public Schools

Subpart D of Section 504 applies to preschool, elementary, and secondary schools (see Appendix A for the text). Until recently, public schools paid very little attention to Section 504 because schools were already serving students (and receiving funds to do so) through the Individuals With Disabilities Education Act of 1990 (IDEA). Parents were generally not aware of Section 504, and school personnel had not been trained on its requirements. In addition, unlike IDEA, which provided some federal funding for schools to serve students with disabilities, Section 504 provides no funds to entities that fulfill its requirements. Thus there was no financial incentive to address the requirements of the law.

More recent developments have resulted in schools’ paying more attention to the requirements of Section 504. These include increased attention to students with disabilities such as attention-deficit/hyperactivity disorder (ADHD), who may not be eligible under IDEA; more awareness by parents of the requirements of Section 504; more awareness by attorneys of the requirements of Section 504; and the passage of the Americans With Disabilities Act of 1990 (ADA), civil rights legislation for individuals with disabilities that is much broader in scope than Section 504 and that received a great deal of publicity. In any case, school personnel are beginning to address the

requirements of the act and identify and provide services and protections to students who are eligible under Section 504.

Schools ignored many of the requirements of 504 for the first 20 years after its passage; however, beginning in the late 1990s, schools began to pay a great deal more attention to the law.

For schools, the challenge is to identify children who are eligible for protections and services under Section 504 and to develop and provide those services and protections. Unlike IDEA, which requires that students be identified as having a specific disability before they are determined eligible for services, Section 504 uses a broad, noncategorical definition of disability. The result is that the identification process is more ambiguous under Section 504 than it is under IDEA. Under IDEA, if a child can be classified as having 1 of 13 designated disabilities (e.g., learning disabilities, mental retardation, visual impairment) that results in the student needing special education, then the child is eligible for services. Often, the eligibility determination regarding a specific disability is made based on the student's performance on certain norm-referenced tests.

Under Section 504, on the other hand, if a student is determined to have a disability, has a record of having a disability, or is thought of as having a disability, and the disability results in a substantial limitation of a major life activity, then the student is deemed eligible for Section 504 services and protections. In many cases, there is a lack of norm-referenced evaluation instruments that can determine if the student has a disability that substantially limits a major life activity. Although the determination of eligibility for IDEA requires some subjective, professional judgment, the availability and use of standardized tests and definitions for specific disabilities result in less use of such judgments. Determining if a child is eligible under Section 504 is quite another matter. In the absence of tests, eligibility decisions regarding Section 504 are left almost entirely to professional judgments. While some professionals would argue that this approach has some advantages over the use of norm-referenced tests, school personnel often experience difficulty in implementing such a model, in part because they are accustomed to using norm-referenced test data for eligibility decisions.

Professional judgment by school personnel is a key element in determining eligibility for Section 504.

School personnel, primarily because of the history of identifying and serving children under IDEA, are often uncomfortable using subjective pro-

cesses to determine the eligibility of students with disabilities. They would much rather determine eligibility on the basis of specific test scores, and, in fact, quantitative test results too often form the primary basis for decisions regarding eligibility and placement for students served through IDEA.

Determining eligibility and programming issues for students served under Section 504 typically has involved a subjective decision-making process. Test cutoff scores are not available for determining eligibility. The U.S. Office for Civil Rights (OCR) has even noted that a diagnosis from a physician is not sufficient evidence to automatically merit an eligibility decision for Section 504. Regardless of the source or type of information available on a particular student, subjective decision making is required to determine whether or not a student is eligible for Section 504 services and protections.