

# A Step-by-Step Process for Developing a §504 Program from Scratch

by

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A program of compliance with the educational services requirements of §504 of the Rehabilitation Act of 1973 consists of a process by which disabled children who may be in need of services under §504 are identified, evaluated, and placed in accordance with their educational needs so that they have an equal opportunity to benefit from the school's academic and nonacademic activities. A solid program also ensures compliance with the procedural safeguards of §504 with respect to notice to parents, an opportunity to examine relevant records, right to a due process hearing, and right to a review of a due process hearing decision.

Although the totality of the requirements under §504 can be stated in one paragraph, developing the individual components outlined above requires some work and study. Nevertheless, §504 is not the stuff of rocket science—a program can be developed from scratch with (1) an awareness of the requirements of the law, (2) a set of sample documents, which can be adapted for use according to a district's needs, and (3) some basic know-how in the area of adaptations and modifications for disabled children in regular classrooms. What follows is a step-by-step process that can bring a district into compliance with §504 from the ground up:

## **STAFF ISSUES**

**1. Assign a §504 Coordinator** for your district whose duties will include developing and maintaining a §504 program, distributing the necessary documents and information to all campuses, and overseeing the progress of all §504 Committees that will be making decisions regarding services for disabled children under §504. A Coordinator also handles parent complaints, coordinates responses to OCR investigations, and makes necessary arrangements for §504 due process hearings. In large districts, you may also consider assigning an individual on each campus to direct that school's §504 activities as a campus coordinator.

**2. Ensure that the §504 Coordinator gets the know-how** necessary to supervise a §504 program. Send that person to conferences and workshops on §504, or bring consultants into the district to provide inservice presentations designed to meet the district's needs and level of sophistication with respect to §504. Then, have the Coordinator pass on all relevant information to other staff by means of campus

workshops and inservice presentations. The Coordinator must represent the administration's commitment to comply with §504 in all campuses.

## **DOCUMENTS**

**3. Create a set of documents to inform your staff** about the requirements of §504, and your district's plans for meeting those requirements. The documents should stress referral process, creation of §504 Committees, and the district's overall mission and philosophy with respect to §504. The documents should stress that §504 is an existing federal law that applies to all schools, and that it is *not* an optional program. The information documents can take the form of a set of district administrative procedures under §504, although they can take any other form that will apprise the staff of the specific process by which the district will comply with §504.

**4. Create a set of forms** that will consist of the backbone of student documentation for the §504 Committees. Necessary documents can be adapted from sample forms from other districts. Resist the temptation, however, to use ready-made forms without modification, since your district's needs may be different than those of other districts. In addition, some districts choose to go beyond the minimum requirements of the law in particular areas (such as parent attendance at §504 committee meetings)—that is each district's individual decision. The set of *minimum* documents needed to substantiate a §504 program are the following:

- (1) **Internal referral form**—serves to gather referral information from parents, teachers, or other staff.
- (2) **Parental Consent Form**— documents parents' consent to initial evaluation
- (3) **Notice of Parent Rights**—informs parents and students of their rights under §504, specifically with respect to notice rights, records, and due process.
- (4) **Notice of Evaluation/Meeting**—notifies parents of upcoming §504 committee meetings and evaluations.
- (5) **Report of Evaluation/Meeting**—informs parents of the §504 committee's basic decisions (i.e. whether the child qualified for §504 services, or whether a referral to another program is being made).
- (6) **Individual Accommodation Plan (IAP)**—for children that qualify for services, the IAP consists of the written plan of accommodations that will be implemented in order for the child to receive an appropriate education under §504.

Many districts' forms are more extensive than that outlined above, but the preceding set can maintain a district in full compliance with the requirements of §504. Remember that the more extensive the set of documents, the greater the potential for paperwork confusion and frustration among your teachers and staff.

**5. Amend your local Code of Conduct or Discipline Manual to bring it into compliance with §504.** Under the law, an eligible child's placement cannot be changed as a result of disciplinary action unless the §504 Committee first finds that his or her behavior was not related to the disability or an inappropriate placement. Generally, any form of exclusions from the child's normal educational setting for more than ten (10) days constitute changes in placement. In addition, the Code of Conduct should specify that a series of short-term exclusions that taken alone do not constitute a change in placement, may violate §504 if they are excessive (i.e. more than 16 days total in a school year).

### ***INITIATING THE REFERRAL PROCESS***

**6. Begin the referral process** by informing all your teachers and campus administrators that the district is setting out to identify all children potentially in need for services under §504. Factors tending to indicate a need for referral include: frequent failures, frequent disciplinary referrals, medical problems, possible attentional difficulties (AD(H)D), past referrals to special education (where child did not qualify), kids returning from hospitals (especially psychiatric), and kids for whom informal classroom modifications have not worked, among others. The presence of one of the above factors alone does not mean a referral must take place, but groups of those factors tend to be present in most qualifying kids.

The referral document mentioned above should make teachers explain clearly why they feel the child needs §504 assistance, and the efforts they have already made informally to help the child achieve. Resist the temptation to over-refer. Section 504 addresses the needs of children who are substantially limited in the classroom *because of disabilities*, not for other reasons (family problems, limited English proficiency, low socioeconomic status, etc.). The task here is to get the ball rolling and begin identifying the kids that should be evaluated by the Campus §504 Committee. In addition, a school does not have to refer a child to §504 simply because a parent requests a referral. The Department of Education has made clear that a child must be referred only if the *school* believes the child might be in need of §504 services because of a disability that substantially limits their learning.

**7. Begin putting together §504 Committees** that will make all necessary decisions regarding a child's identification (eligibility), evaluation, and placement (accommodation plan). The Committees are not fixed. They must be composed of a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options available (i.e. teachers, principals, counselors, §504 Coordinator, etc.). Thus, the Committee might not consist of the same group of people for one child as for the next.

**8. Make sure that §504 Committees understand eligibility criteria** under §504. Before a child can be made eligible for §504 services, he or she must (1) suffer from a physical or mental impairment that (2) substantially limits a major life activity such as learning. All impairments might not substantially limit children's performance in school. Therefore, the existence of a physical or mental impairment does not

mean that the child automatically qualifies under §504. Potential disabilities that might qualify a child under §504 are: ADD, ADHD, asthma, diabetes, social maladjustment, temporary health conditions, chronic medical conditions, learning disabilities that do not qualify for special education, dyslexia, etc.

**9. Ensure that parents (a) provide consent for initial evaluation and (b) receive prior notice of Committee actions.** Once a child is referred to the §504 Committee, ensure that the Committee (or the Coordinator) notifies the parents of their rights under §504 (notice in writing is not legally required, but is a great idea). In addition, the Committee should notify the parents before meeting to evaluate their child (both notices can be sent simultaneously). Parental consent for an evaluation under §504, *while not mentioned in the §504 regulations*, is required by the Office of Civil Rights.

In addition, the regulations do not require that schools invite parents to §504 Committee meetings, but some districts are choosing to invite parents as a matter of policy and good parental relations. Parent information can be received outside of the committee process and then be reviewed in actual committee meetings.

### **INITIATING COMMITTEE ACTION**

**10. The §504 Committee then collects information** necessary to make an educational determination that a child may suffer from a disability that is substantially limiting her performance in the classroom. Conclusive medical diagnoses of disabilities are not required for §504 eligibility purposes. Outside evaluations are not generally required, unless the Committee feels it cannot plan a set of modifications for a child without outside assistance (should be necessary in only a tiny minority of cases). If the Committee feels an outside assessment is necessary, the district must pay for the assessment.

Normally, however, readily available information in a child's cumulative folder is enough to determine whether a child needs modifications in the regular class because of a disability. Possible types of information could include: standardized scores, report cards, referral forms, disciplinary records, teacher reports and observations, prior special education testing results, parent information, school health records, counselor's reports, evaluations privately performed by parents, etc.

Committee members (or other staff) can also perform informal checklists and instruments to determine the presence and severity of a handicap in a child. For instance, several checklists exist on the market to uncover potential attentional problems such as AD(H)D (Achenbach, ADD Evaluation Scales, Conners Behavior Teacher Rating Scale, Child Assessment Profile, etc.). For children with potential reading disorders, the §504 Committee may order dyslexia screening to be performed to determine whether the §504 committee should recommend placement in the local dyslexia program as part of the child's §504 accommodation program.

**11. The Committee then determines eligibility under §504.** Once it has the relevant information, the Committee needs to make an informed judgment as to whether the child may suffer from a disability that substantially limits learning (or another major life function such as walking, running, working, breathing, seeing, hearing, etc.). The Committee should state what they think the potential disability is, and if they feel it substantially limits the child's learning. Remember that §504 Committees are not “diagnosing” the child merely because they indicate that their evaluation data shows the signs of a particular disability. This eligibility process is required under §504 as an educational, not medical, determination. §504 Committees are not exposing themselves to liability for “diagnosing” children without medical licenses because they are not truly “diagnosing” a medical condition for purposes of medical treatment or rehabilitation; they are identifying educational needs for accommodations that are required for children to receive an appropriate education *despite* their disabilities.

**12. The Committee develops a plan of accommodations.** In the same meeting, if appropriate, the Committee can develop the modifications or plan of services it feels the child needs in order to have an equal opportunity to succeed in the classroom. The child may require environmental modifications, curricular modifications, modified testing procedures, a behavior management plan, dyslexia services, counseling, transportation, or a variety of other modifications and support services. The written plan setting forth the services the district is willing to provide the child in order to meet his needs can be called an Individual Accommodation Plan (IAP).

### **ENSURING IMPLEMENTATION**

**13. Provide copies of the IAP to the parents and all teachers.** Once an Individual Accommodation Plan is developed, it should be sent to the parents immediately and shared with all the child's teachers.

**14. Follow up to ensure that the IAP is carried out in the classroom.** Implementation of §504 IAPs is the most important part of the puzzle. No amount of planning will substitute for a teacher's willingness to modify a child's curriculum and learning environment in accordance with the Committee's IAP. The §504 Coordinator can be instrumental in monitoring compliance with the terms of an IAP. Teaching staff should be made aware that willful refusal to comply with a §504 child's accommodation plan can potentially result in *personal* liability for actual and punitive damages. In the case of *Doe v. Withers*, 20 IDELR 422 (W. Va. Cir. Ct. 1993), a history teacher who simply refused to provide oral testing for a disabled student in his class was slapped with a \$15, 000.00 judgment.

### **REVIEW AND REEVALUATION**

**15. The Committee should meet again as needed,** to modify the IAP or add or subtract services. Preferably, a review of the program should take place yearly, although a reevaluation can take place every three years, or as often as is necessary.

**16. New teachers should replace former teachers on the Committee** as the child progresses from year to year,. They will have new information and ideas regarding the child, his educational needs, and how those needs can best be met.

### ***OBSERVING PARENTAL RIGHTS***

**17. Comply with §504 procedural safeguards.** Be prepared to honor parent requests for records, and to provide a due process hearing before an impartial hearing officer. The hearing officer need not be an attorney, but he or she should be knowledgeable about §504, and not currently employed by the district or closely related to a board member.

**18. Be prepared to handle parent complaints to OCR** (Office for Civil Rights), which a parent can file at any time, even if a §504 hearing is pending. OCR has a new Complaint Resolution Manual that will allegedly facilitate speedier resolution of complaints. Get a copy of OCR's Complaint Resolution Manual as soon as you receive notice of an OCR complaint against the district. Then cooperate fully with the OCR investigator and provide all the records requested.

### ***GENERAL ADVICE***

**19. Get good advice and information.** A knowledgeable consultant should be available to answer the odd question that always comes up about the legal requirements of §504 in the schools, as well as to update the staff with new information and important court decisions.

**20. Keep the §504 process as simple as possible,** and far removed from the traditional special education process. Think of §504 as a creature of regular education, with little connection to the existing special education process. Once in place, a §504 program can run efficiently and without much expense.

**21. Ensure compliance through the employment process.** As noted previously, for §504 to work, modifications must be implemented in the classroom. That sometimes means that reluctant staff members must be encouraged (coerced?) into compliance. When campus administrators are committed to §504 compliance, and a teacher's reluctance to implement §504 modifications is reflected in that teacher's evaluation, chances are that the §504 child will get the needed modifications.

**22. Build bridges to other district or school programs.** While students eligible under §504 must have their modifications and services determined by the §504 committee, that does not mean that other programs in the district are off limits to the §504 child. On the contrary, the §504 student should have access to *all* programs for which he is eligible, including early childhood, limited English proficiency, remedial instruction, peer tutoring, etc.