

The Role of the Section 504 Coordinator: Developing and Implementing Compliance- Oriented §504 Programs

by

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§504 COMPLIANCE IN A NUTSHELL

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** by a **group of knowledgeable persons** in accordance with their educational needs, so that they have an **equal opportunity** to receive an education despite their disabilities. The provision of a FAPE is made possible by the implementation of a §504 services plan. A solid §504 program also ensures compliance with the **procedural safeguards** of §504 with respect to **notice** to parents, an opportunity to review relevant **records**, the right to a due process **hearing**, and the right to a **review** of a due process hearing decision.

GETTING STARTED

Although the totality of the requirements under §504 can be stated in one paragraph, developing the individual components outlined above requires adherence to certain basic processes. Indeed, a program can be implemented perfectly in compliance with law using (1) an awareness of the requirements of the law, (2) a set of standardized forms and procedures, and (3) some basic know-how in the area of adaptations and modifications for disabled children in regular classrooms.

A key function of the §504 Coordinator is establishing uniformity of procedures and practices across all campuses. First, this requires a single set of forms that address all required §504 procedures and are in compliance with changes to the law effected by the ADA Amendments of 2008 (ADAAA). Uniformity of practices also requires a shared knowledge base that is free of misconceptions or generalizations regarding §504 and disabilities. This requires some degree of training from knowledgeable consultants, or training of the §504 Coordinator that is then shared with all campuses.

Large districts vs. small districts—In small districts, the §504 Coordinator functions on a “hands-on” basis, and may attend most §504 meetings. The Coordinators may arrange personally for training, or provide the trainings

themselves. In small districts, the Coordinator monitors compliance personally. In larger districts, the Coordinator usually assigns campus designees who will undertake §504 responsibilities on their respective campuses. These designees must have sufficient knowledge or receive training, and they will serve as the contact points of the campuses for the §504 Coordinator.

What follows is a step-by-step process that can bring a district into compliance with §504 from the ground up:

DOCUMENT NEEDS

- **A set of procedures** to inform staff about the requirements of §504, as well as of the district's plans for meeting those requirements. The documents should stress the §504 referral process, creation of §504 Committees (or group decision-making processes), 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 set of procedures should be as simple as possible, and should form the basis for initial training of §504 committee members and/or campus coordinators.

- Every district needs a **set of forms** that will consist of the backbone of student documentation for the §504 Committees. 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. Other districts have extensive sets of forms that may not be legally necessary. The set of *minimum* core documents needed to substantiate compliance with §504 are the following:
 - a. **Internal Referral Form**—serves to gather referral information from parents, teachers, or other staff.
 - b. **Procedural Safeguards/Rights Notice**—informs parents and students of their rights under §504, specifically with respect to notice rights, records, and due process.
 - c. **Notice of Evaluations or Other 504 Actions**—notifies parents of upcoming §504 committee meetings and evaluations.
 - d. **Report of 504 Committee Meetings or Group Decisions**—informs parents of the §504 committee's basic decisions (i.e. whether the child qualifies for §504 services, continues to qualify for services, or ceases to qualify).
 - e. **§504 Services Plan**—for children that qualify for services, the IAP consists of the written plan of accommodations and/or services that will be implemented in order for the child to receive an appropriate education under §504.

The forms developed by CESD since 1999 contain the above forms, and

represent a complete §504 compliance system, including Operational Guidelines, Notice and consent forms, and forms related to dyslexia and discipline issues.

THE IDENTIFICATION AND REFERRAL PROCESS

- **Identifying and referring potential §504 students**—The §504 Coordinator must ensure that all teachers and campus administrators are informed that the district has a duty to identify all children potentially in need for services under §504. Factors tending to indicate a need for referral may include: academic failure, frequent disciplinary referrals, medical problems, possible attention deficits, past referrals to special education (where child did not qualify), dismissals from special education, students returning from hospitals, kids for whom informal classroom modifications and regular education interventions have not succeeded, recurring behavior problems, failure in statewide assessments, and parent reports of disability, among others. The presence of one of the above factors alone does not necessarily mean a referral must take place, but clusters of some of these factors tend to be present in most qualifying kids.

The referral form should make teachers explain clearly why they feel the child needs §504 assistance, as well as the efforts they have already made informally to help the child achieve. Section 504 is intended to address the needs of children who are substantially limited in school *because of disability*, not other reasons (family problems, limited English proficiency, low socio-economic status, etc...). The referral task is to accurately identify students that should be evaluated by a §504 Committee for potential 504 eligibility. The touchstone is staff suspicion of (1) disability, and (2) substantial limitation on learning or another major life activity that implicates a potential need for §504 services. 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 or another major life activity.

- **§504 Committees**—All necessary decisions regarding a child's eligibility, evaluation, placement, and development of a §504 plan (if needed) are made by a group of persons referred to as a 504 committee or team. The committees are not a fixed group of persons. They must, however, be composed of a group of persons that includes persons knowledgeable about the child, the meaning of the evaluation data, and the placement options available (i.e. teachers, principals, counselors, §504 representatives, etc.). Thus, the committee might not consist of the same group of people for one child as for another. The §504 Coordinator must ensure that campuses are creating §504 Committees to address initial evaluation and eligibility, as well as periodic reviews/reevaluations of students.

- **Prior notice and consent**—Once a child is referred to the §504 Committee, the school must notify the parents of their procedural safeguards under §504. In addition, the Committee must notify the parents before meeting to evaluate or take any action on their child (both notices can be sent simultaneously). Parents must also consent to initial evaluation. If the student is determined eligible and will receive a §504 plan, OCR assumes that the parents consent to placement in

§504, although parents may decide to decline §504 placement, if they so indicate.

SECTION 504 COMMITTEE ACTION—EVALUATION AND ELIGIBILITY DETERMINATION

- As a meeting is being scheduled, and parents are contacted, **the §504 Committee collects data necessary to make an educational determination that a child may suffer from a disability that is substantially limiting one or more major life activities.** Conclusive *medical* diagnoses of disabilities are not necessarily required for §504 eligibility purposes, although in many situations, parents will provide such documentation to the Committee. Outside evaluations are not be required, unless the 504 Committee feels it cannot plan an appropriate set of accommodations and services for a child without outside data (should rarely be necessary). If the Committee determines that an outside or formal assessment is necessary, the district must pay for the assessment. If a student's needs are so complex that a formal assessment appears to be required, a referral to special education may be warranted.

Normally, however, information readily available from a child's school folder and teachers may be enough to determine whether a child qualifies under §504 and needs modifications in the regular class because of a disability. Possible types of information considered could include: statewide assessment scores, other 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 obtained by parents, and counselor input, among others.

Committee members (or other staff) can also perform informal checklists and instruments to determine the presence and severity of a disability in a child. For instance, several checklists exist on the market to help identify (from an educational standpoint) potential ADHD (Achenbach, ADD Evaluation Scales, Conners Behavior Teacher Rating Scale, Child Assessment Profile, ACTERS etc.).

- **Based on an evaluation considering the various sources data, the Committee then determines eligibility under §504.** Once it has the relevant information, the Committee needs to make an informed judgment, based on the gathered data, as to whether the child has a physical or mental impairment that substantially limits any major life activity. If so, the student is eligible under §504. In addition, in order for the child to qualify for accommodations or services under §504, the student must show a need for services in order for their needs to be met as adequately as the needs of their nondisabled peers. The Committee should state what the impairment is, and whether it substantially limits one or more of the student's major life activities.

§504 Committee eligibility findings are educational determinations—Section 504 Committees are not “diagnosing” the child from a medical standpoint merely because they indicate that their evaluation data shows the signs of a particular disability. The eligibility determination required under §504 is an educational, not medical, determination. Members of §504 Committees

are not exposing themselves to liability for “diagnosing” children without medical licenses because they are identifying educational needs for accommodations and/or services that are required for children to receive an appropriate education despite their disabilities. These findings, moreover, are legally required under §504. Medical diagnoses would be required for actual medical intervention and drug treatment, which is not the responsibility of the school. Although §504 Committees may use disability terminology similar to that used by doctors in the diagnostic process, the focus of the §504 Committee is purely educational.

“Educational need” in academics is not applicable to §504 eligibility—A major misconception under §504 is that a student’s impairment must limit “learning” or create an academic need in order for the student to qualify. It is important to understand, particularly after the ADA, that students can qualify under §504 if their condition does not affect their academic functioning at school. Students with health impairments or severe allergies, for example, may not necessarily be affected in their ability to function academically, but some bodily systems or functions may be limited by their impairment, thus rendering them eligible. Many of these students will need health-related services and accommodations in order to safely attend school. Not all §504 services and accommodations are related to academic needs; some are related to health needs, others to behavior needs, others to social deficits, and yet others to physical difficulties.

- **If it determines the students needs services, the Committee then develops a 504 services plan**—In the same meeting as the initial eligibility meeting, if appropriate, the Committee can develop the accommodations or plan of services it feels the child needs in order to have an equal opportunity to participate and progress in the regular curriculum. The child may require environmental accommodations, health services, nursing assistance, instructional delivery accommodations, modified testing procedures, a behavior intervention plan, reading remediation services from the dyslexia program, counseling, transportation, or a variety of other accommodations and support services. Importantly, unlike special education students, §504 students cannot access special education classrooms or services, as they are generally funded entirely from IDEA funds, which are intended only for special education students.

§504 SERVICES PLAN ISSUES

- **Accommodations on §504 plans should be linked to specific areas of educational need identified in the §504 evaluation process.** The plan should contain only those accommodations that must be implemented consistently in order for the students needs to be met as adequately as the needs of nondisabled peers. Accommodations that may be needed occasionally are best left off the plan and provided as needed based on individual teacher discretion. Plans should avoid listing accommodations on an “as needed” basis, as those plans may not sufficiently specify the school’s commitment regarding mandatory accommodations to meet Office for Civil Rights (OCR) standards.

- **Common Problem Areas in 504 Accommodation Plans**

Vague accommodations, such as “modified tests”—Vague terms lead to disputes over implementation. Committees should specify the exact type of testing accommodations to be used. In general, accommodations should be stated with enough specificity that no questions remain regarding implementation.

Shortened tests or assignments—Best handled with extra time, as this ensures students remain responsible for all elements of the curriculum. If tests and assignments are shortened, it must be done in a way that preserves the elements of the curriculum intended to be included in the original test or assignment. Committees can specify the degree of “shortening” by a percentage amount, or leave it to teacher discretion in light of the multiplicity of types of assignments and tests.

Extra time/Extended deadline—It is best to specify the extra amount of time to be provided for daily assignments and longer projects. Make sure parents and students understand that “extra time” does not mean unlimited time, and that assignments and tests will have a deadline, albeit an extended one.

Note-taking assistance—To avoid disputes, specify the nature of the note-taking assistance. The need for the student to have effective notes to study from should be balanced against their need to learn effective note-taking skills.

Assignment notebooks and other organizational accommodations—In light of the student’s age, specify the degree to which the student will participate in the organizational process, and to what degree staff will assist.

Accommodations “upon student request”—Such accommodations are probably not a good idea unless the student has good judgment and self-awareness of his or her deficit areas and weaknesses. Moreover, such an arrangement essentially delegates the §504 committee’s responsibility to students.

Behavior plans—For students with behavioral disorders or ADHD, the mainstay of their §504 plan may be individualized behavior plans to address certain target behaviors with positive strategies and individualized consequences. As part of developing the plan, have the committees gather data on the student’s behavior (what, where, how frequent, how serious, what happens before, what happens after, what has been tried, what works, what does not work, etc...). That information can be the foundation for concise and clear behavior plans that become part of the §504 accommodation plan.

Health-related accommodations and plans—Ensure the participation (or

data provision) of a staffperson with knowledge of health issues, such as a school nurse. Make sure the plan is clear and specific.

Communication plans with parents—A common feature of plans for students with organizational problems is a system of communication between parents and staff. But make sure that the system can be implemented long-term without great difficulty, or lapses will happen, as in the case summarized below.

A district's 504 plan for a student with ADHD contained an accommodation requiring teachers to notify his parent when his grade average in any class fell below 75 by e-mail. *Jim Ned Cons. Ind. Sch. District*, 40 IDELR 131 (OCR 2003). The regular policy called for written deficiency notices to be sent to parents in the middle of grading periods when grades fall below 70. The school did not implement the accommodation as stated in the 504 plan, although it implemented all other accommodations and even went beyond the written plan. The high school principal reported to OCR that the accommodation in question was not added because any educator believed it was necessary, but rather only because the parent insisted on adding it. OCR held that although there was a failure to implement the plan as written, the student was not denied a FAPE.

ENSURING IMPLEMENTATION

Ensuring implementation of §504 plans at the campuses is a crucial part of the §504 Coordinator's role. A significant problem for public schools with respect to §504 is not the lack of a basic understanding of the §504 process and requirements, but rather a problem of follow-through. Many districts with §504 documents and procedures in place may nevertheless fail to comply with the accommodations and/or services required under the students' §504 plans. The only answer here is for administration to reflect a legitimate commitment to comply with §504—not only superficially, but in every classroom and for every §504 child. Failures to implement §504 plans can result in liability for the schools, and in certain extreme situations, potential personal liability for instructional staff. Useful techniques to promote proper implementation of §504 plans include the following:

- Ensure that a campus-based procedure is in place to distribute §504 plans to all affected teachers quickly (and to document their receipt of the plans)
- Train campuses on the potential consequences of non-implementation of §504 plans
- Avoid excessive sets of accommodations on §504 plans
- Ensure accommodations in plan connect to disability-related educational needs
- Help campuses establish systems to monitor implementation periodically

- **Follow-up to ensure that the 504 plan is carried out in the classroom—**Implementation of §504 plans is as important as the process of developing the plans. No amount of planning will substitute for a teacher's willingness to modify a child's instruction and learning environment in accordance with the Committee's plan. Teaching staff should be made aware that willful refusal to comply with a §504 child's accommodation plan can potentially result in OCR complaints, §504 hearing requests, or potential legal actions in federal court.

REVIEW AND REEVALUATION

- **The Committee should meet again as needed,** to modify the §504 plan or add or subtract services. Although federal regulations require only “periodic” reviews, at least every three years, annual reviews/reevaluations are a common best practice.
- **Reevaluations must also take place prior to significant changes in placement,** which include disciplinary changes in placement, such as removals to DAEP of longer than 10 consecutive school days.

EXIT FROM §504

- When students no longer qualify for services under §504, they may be **dismissed or exited from 504**—If, upon a reevaluation, the team determines that a child either no longer has a physical or mental impairment, or is no longer substantially limited by their impairment, it can decide to dismiss or exit the student from §504 eligibility. Students qualify to receive §504 services only so long as they continue to meet eligibility criteria. Since dismissal from §504 is a significant change in placement, it requires a reevaluation, and the team should gather data supporting the child's lack of eligibility. After the Congress acted to expand §504 eligibility with the ADA Amendments Act of 2008, fewer students will be dismissed from §504 if they continue to have impairments, since the standard for “substantial limitation” was relaxed under the 2008 law.

GENERAL GUIDANCE

- **Get good advice and information**—A person knowledgeable about §504 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.
- **Keep the §504 process as simple as possible**—The more staff know about §504, the less “gray” areas they will perceive in the process. Simplicity of process plus on-going training are the keys to successful and smooth compliance with §504 requirements.
- **Strive for uniformity of practices**—Try to ensure all campuses have the same set of forms, the same training and knowledge base, and the same process in place.