

PURPOSE:

The purpose of Section 504 of the Rehabilitation Act of 1973 (29. U.S.C. Section 794) is to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance.

"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 or benefits from federal financial assistance."

In the school setting, eliminating discrimination on the basis of disability is accomplished by providing equal access to educational opportunity by providing reasonable modifications and services.

Section 504 Definition of "DISABLED/HANDICAPPED" (Reg. 104.3 (j))

Any pupil who has temporary or permanent:

- physical or mental impairment, which substantially limits one or more major life activities, has a record of such an impairment.
or
- is regarded as having such an impairment.

Although section 504 does not explicitly define the term "**substantially limits...a major life activity**", the Office for Civil Rights has ruled that the phrase "substantially limits" is to be defined by the school district (Letter to McKethan. 23 IDELR 504 [OCR 1994]). Therefore the Scottsdale Unified School District has adopted the definition included in the Americans with Disabilities Act of 1990:

A major life activity is substantially limited if a person is "unable to perform a major life activity that the average person in the general population can perform" [29. CFR 1630.2(j)(1)(I)]. Therefore, the extent to which an impairment restricts a specific individual's activities, and the duration of that individual's impairment, must be considered."

OR

A major life activity is substantially limited if a person is "significantly restricted in the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that major life activity" [29.CFR 1630.2(j)(1)(ii)].

To determine whether a student's mental or physical impairment "substantially limits" the major life activity (of learning, writing, reading, thinking, concentrating, etc.), the district should compare the student's academic progress to that of the "average child" of comparable age, not a child of similar intellectual potential.

A student is not "substantially limited" simply because the student is not reaching his/her potential.

-[T.J.W. by Butler v. Dothan City Board of Education(D.C. Alabama 1997), 26. IDELR 999]

-[Title 29, Code of Federal Regulation section 1630.2(j)]

A determination of whether a student is substantially limited in the educational setting within the meaning of Section 504 will be based upon information from a variety of sources. Those sources may include, but are not limited to, the child's parents, teachers, school nurse, psychologist, 504 site coordinator, principal, counselors, etc. Any and all information submitted by the parent will be considered.

Definition of "MAJOR LIFE ACTIVITIES"

(Reg. 104.3 (j) (2) (ii))

"Major life activities" means functions such as:

- caring for oneself
- performing manual tasks
- seeing
- hearing
- eating
- sleeping
- walking
- standing
- lifting
- bending

- speaking
- breathing
- learning
- reading
- concentrating
- thinking
- communicating
- working

The list of activities is calculated to include those basic activities that the average person in the general population can perform with little or no difficulty (ADA, 29 CFR 1630.2(i)).

Evaluations for 504 Purposes:

The process for determining Section 504 eligibility begins with a determination of eligibility meeting coordinated by the site 504 coordinator and parents. This meeting can occur at the request of the parent or school personnel. The evaluation to determine whether or not a child qualifies for 504 accommodations is completed by a team of individuals who know the child. The evaluation must be appropriate to the needs and circumstances or the individual pupil. However, "evaluation" does not necessarily mean "test". In the section 504 context, "evaluation" refers to gathering of data or information from a variety of sources so that the 504 team (group of persons knowledgeable about the child) can make the required determination).

The 504 team will carefully consider any pertinent information as it relates to the pupil in the school setting. The information typically considered comes from several sources: physician reports, parents, teachers, school records, observations or interviews by school personnel, etc. The Section 504 team/Intervention Planning Team (IPT) may include the pupil services director or designee, psychologist, guidance counselor, nurse, teachers, parent, and/or pupil. Unlike IDEA, Section 504 does not give specific time lines for conducting the evaluation, but the district is expected to conduct any evaluations in a timely manner.

An evaluation for Section 504 purposes may include information gathered informally and/or may include some testing (review of records, teacher/parent/pupil interview, etc.). Based upon the information, decisions are made regarding whether or not the pupil has a temporary or permanent mental or physical impairment which substantially limits his/her learning. If a pupil is found eligible, a Section 504 service/accommodation plan is developed.

Eligibility for 504 Services:

Whether or not the pupil is eligible for Section 504 services will be determined by a consensus of participating public school personnel after consideration of all relevant data, including consideration of any information the parent and pupil wish to provide. If the pupil is found to be eligible for Section 504 accommodation, written documentation will be placed in the pupil's file. The pupil's eligibility and the specific plan of service will be reviewed annually.

A general education classroom with accommodations and /or the use of supplementary materials/equipment, is the appropriate setting for pupils who are determined disabled under Section 504. Should the Section 504 team determine a pupil requires more intense services, written documentation should include:

- Evidence that a Section 504 services plan has been implemented over a reasonable period of time and has not resulted in pupil progress.
- Evaluations which are expanded and may include standardized assessments from specifically trained personnel such as speech therapist, psychologist and resource specialist.