

Section 504 & ADA

Passing the Law

- Part of the **Rehabilitation Act of 1973**
- Primarily a funding bill for vocational rehabilitation
 - “At the time, both the Nixon administration and disability activists thought the Rehab Act was just a funding bill. No one debated Section 504, or seemed particularly concerned with civil rights protection.”
(http://www.disabilityhistorywiki.org/wiki/index.php?title=Rehabilitation_Act_of_1973)

Section 504

- Granted **civil rights** to individuals with disabilities
 - Uses language similar to Civil Rights Act of 1965 and Title IX
- No otherwise qualified individual with a disability in the US ... shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or any activity receiving Federal financial assistance

Enacting the Law

- The Department of Health, Education, and Welfare (HEW) estimated that compliance could cost billions. They **stalled** the **issuance** of final regulations.
- Carter's new secretary of HEW, Joseph Califano, assigned lawyers to rewrite the regulations. **Disability activists** held a candlelight vigil.
- 4 years after passage, Califano signed the regulations without change.

Application to pK-12 Education

- Public school receive federal funding
- 504 protections extend to after school care, summer school, employees, etc.

Who? Person with Physical or Mental Disability

- **Physical Disability**

- Includes arthritis, asthma, diabetes, MS, CP, epilepsy, Tourette's syndrome
- Does not include pregnancy, obesity

- **Mental Disability**

- Includes ADHD, LD, MR/ID, emotional/ mental illness
- Does not include personality traits, sexual behavior disorders, compulsive gambling
- ADA further *excluded person engaging in illegal use/ possession of drugs or alcohol*

Who? Person with Physical or Mental Disability

- Must **substantially limit one or more major life activities**
 - Such as taking care of one's self, performing manual tasks, walking, seeing, hearing, breathing, learning, and working
 - ADA added other activities
 - Eating, sleeping, standings, concentrating, thinking, communicating
 - Substantially limits determined **in reference to average person** in manner and duration
 - Includes anyone id'd under IDEA
 - But not all 504 eligible are IDEA eligible (e.g., students with disabilities that do not adversely affect education)

Who? Person who Has a Record of Such an Impairment

- Even if person no longer has disability, they can be **protected if they are discriminated against on the basis of disability**
 - e.g., student can't be kept from assembly because he previously had an emotional disability

Who? Person who Is Regarded as Having Such an Impairment

- Protections extended to people discriminated against because they have a disability **even if they don't have a disability**
- History and regard do not necessitate special services, just protection from discrimination

Who? Otherwise Qualified

- If not for disability, student must be qualified to participate to be protected under 504
 - Student with ADHD not entitled to be in band if he can't play an instrument
 - Being otherwise qualified considered in the context of reasonable accommodations
 - If student can play an instrument with a reasonable accommodation he cannot be excluded from band on basis of disability

Protection from Discrimination

- **Facilities** must be physically accessible
 - Not all schools or every part of each school
 - Just can't result in segregation
 - Guidelines depend on when building was constructed

Protection from Discrimination

- **Program accessibility**
 - Primarily rendered through **reasonable accommodations**
 - **Not required** if they impose **undue hardship** or **violates basic integrity of program**, considers **cost**
 - Typically include **instructional and assessment accommodations**

Protection from Discrimination

- **Comparable facilities**
 - If separate facilities used, must be comparable
 - Portables that are not comparable used just for special education violate Section 504

FAPE

- Guarantees **FAPE** for children with disabilities
 - Interpreted with similar (and less than perfectly clear) meaning as in IDEA
 - Some suggest it is a lesser standard under 504
 - When students covered by 504 but not IDEA, FAPE still needs to be provided
 - Clearly involves **justifiable evaluation and placement procedures**, and **procedural safeguards**

School District 504 Responsibilities

- Must appoint a **504 Coordinator**
 - Oversees 504 procedures
 - Conducts self-evaluation
 - Trains staff
 - Develop Child Find system
 - e.g., screenings

School District 504 Responsibilities

- **Identification**

- Law doesn't specify referral procedure, but districts should have one
- Any number of school problems could trigger referral
- Students referred for but not id'd for special education under IDEA should be considered

School District 504 Responsibilities

- **Evaluation**

- Must obtain **parental consent** and provide parental notification of procedural rights
- **Multidisciplinary team** including individuals knowledgeable about child, evaluation, and placement options
 - Doesn't specify members
- **Tests** must be **validated for purpose**, tailored to assess specific area (not all just IQ tests), don't measure disability unless intended to
- Must be **timely**, but no timeline specified
- No parental right to external evaluation

School District 504 Responsibilities

- **Educational programming**
 - Section **504 Plan** or individualized accommodation plan
 - Documents disability and major life activity limits
 - Basis for determining disability
 - Educational impact of disability
 - **Necessary accommodations**
 - **Placement**
 - Can be met through IEP if child has disability under IDEA
 - Does not require IEP if child does not have a disability under IDEA

School District 504 Responsibilities

- **Placement**
 - **LRE**
 - Similar to IDEA, gen ed classroom is preferred placement, unless appropriate education cannot be achieved with supplementary aids and services
 - Includes preference for neighborhood school

School District 504 Responsibilities

- **Reevaluation**
 - **Periodically or before major change**
 - No specific timeline as in IDEA
 - Before change in school or placement

Enforcement and Procedural Safeguards

- **Grievance**
 - Filed with Section 504 Coordinator
- Or File **Complaint with Office of Civil Rights**
 - Must be filed within 180 days of alleged discrimination
 - School can address without admitting fault through pre-determination settlement process
 - Next step is on-site investigation (and, if violation found, correction)

Enforcement and Procedural Safeguards

- **Due Process Hearing**
 - Some states have separate officers for IDEA and 504, some use same
- **File Suit in Federal Court**
 - In some circuits monetary damages have been awarded, not in others

Case Law

- Mark H. v Hamamoto, 2010
 - US 9th Circuit Court of Appeals ruled that district court erred in ruling that Hawaii DOE did not violate 504 by not providing reasonable accommodations of “autism-specific special education services” for two sisters with autism.
 - Court ruled HI **DOE failed to provide reasonable accommodations or meet girls’ needs as needs of non-disabled students are met** as required by 504.

504 Conclusion

- Considerable overlap between 504 and IDEA
- **504 broader, less detailed and specific than IDEA**
- More focused on civil rights than educational procedures
 - Although these two concerns overlap considerably

ADA

- Signed into law in **1990**
- **Extended reach of 504**
 - Includes private employers, state and local governments, privately owned businesses and facilities open to public
- **Does not add pK-12 educational protections beyond IDEA and 504**
- Affects schools as employers and teaching students awareness/ self-advocacy

Titles of ADA

- **Title I: Employment**
 - **Reasonable accommodations** (does not impose undue hardship)
- **Title II: Public Services**
 - State and local governments, public transportation
- **Title III: Public Accommodations**
 - **Includes private schools**, does not cover private religious schools or public schools
 - Requires **effective communication** and **architectural accessibility**

Titles of ADA

- **Title IV: Telecommunications**
 - **Telephone relay services** for deaf, **closed captioning** of PSAs

ADA Responsibilities of Schools

- Districts must have an **ADA Compliance Coordinator**
- Must conduct self-evaluations
- Can't discriminate in employment
 - Are teachers with learning disabilities otherwise qualified to teach with reasonable accommodations?