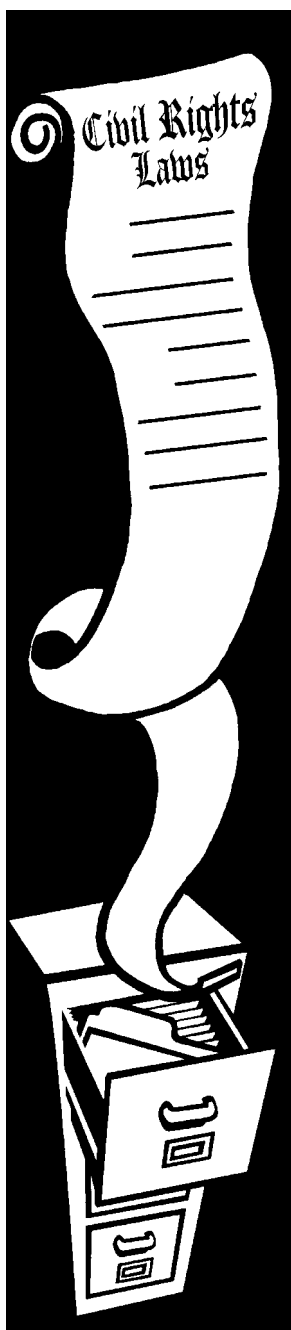


Section 504, ADA, and Education Reform Fact Sheet



Public schools, school systems, and education reform initiatives must comply with Section 504 of the *Rehabilitation Act of 1973* (Section 504) and Title II of the *Americans with Disabilities Act* (ADA) which prohibit discrimination on the basis of disability. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance, including *Individuals with Disabilities Education Act* (IDEA) funds. Title II of the ADA prohibits discrimination on the basis of disability by state and local governmental entities, including public school districts. Virtually all public school systems receive federal funds, and school districts are considered local governmental entities. Both statutes require school districts to provide a free appropriate public education (FAPE) to students with disabilities protected by those laws.

In short, both statutes provide that no person shall, by any reason of his or her disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination

in any services, programs, or activities of an entity covered by the law. The Office of Civil Rights (OCR) interprets the requirement of Title II of the ADA as consistent with those of Section 504. In addition to covering students who receive FAPE under Part B of IDEA, Section 504 also applies to a student not eligible for special education and related services under Part B, but who has a disability within the meaning of Section 504.

Section 504 and the ADA can help ensure that students with disabilities enjoy the benefits of standards-based education reforms and the quality education they aim for. The theory behind standards-based education reform is that educational quality will rise for all students, by first setting high standards, then shaping curriculum, courses, and instruction to meet the standards, and finally holding schools accountable for student achievement.



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✓ Key concepts under Section 504 and the ADA

1. Comparable Benefits and Services

Section 504 and the ADA promote equal access to and participation in programs and services. The regulations implementing these laws require that students with disabilities receive benefits and services comparable to those given their nondisabled peers. These laws make it illegal for schools to discriminate on the basis of disability by –

- ✓ denying a student the opportunity to participate in or benefit from a benefit or service;
- ✓ providing an opportunity to participate or benefit that is unequal to that provided others;
- ✓ providing a benefit or service that is not as effective as that provided to others (does not provide an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as other students);
- ✓ providing lower quality benefits, services or programs than those provided others; or
- ✓ providing different or separate benefits or services, unless they are necessary for benefits or services to be as effective as those provided to others.¹

The Section 504 regulations specifically require that a recipient of federal funds that operates a public elementary or secondary education program must provide a free appropriate public education to each qualified

¹ 34 C.F.R. 104.4(6)(1) - Section 504 regulations; 28 U.S.C. 35.130(b)(1) - ADA regulations.

child with a disability residing in the recipient's jurisdiction in accordance with the Section 504 requirements regarding least restrictive setting, evaluation and placement, and procedural safeguards. FAPE under Section 504 means that the education provided to students with disabilities must meet those students' needs as adequately as the needs of nondisabled students are met.²

2. Criteria and Methods of Administration

It is illegal under the Section 504 and ADA regulations for school systems to use "criteria and methods of administration" that, *intentionally or not*, result in discrimination. "Criteria" are written or formal policies, while "methods of administration"³ are the school system's actual practices and procedures. The ban on discriminatory policies, practices, and procedures includes those that:

- ✓ have the effect of discriminating against students with disabilities, or
- ✓ have the effect of defeating or impairing accomplishment of the education program objective (or school reform initiative) with regard to students with disabilities.

3. Accommodations

In meeting their responsibilities to students with disabilities under Section 504 and Title II of the ADA, school systems must make accommodations and modifications to address

² 34 C.F.R. 104.33.

³ 34 C.F.R. 104.4(6)(4); 28 C.F.R. 35.130(6)(3).

the needs of students with disabilities. Making accommodations and modifications means changing the way things are usually done in order to take into account a child's disability-related needs. Examples of accommodations and modifications include modifying rules, policies or practices; removing architectural or communication barriers; or providing aids, services, or assistive technology.

Under Section 504, children with disabilities must be educated with their nondisabled peers "to the maximum extent appropriate," and "removal . . . from the regular educational environment occurs

only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."⁴ The ADA regulations similarly provide that a public entity, such as a school system, must provide programs and services "in the most integrated setting appropriate to the needs"⁵ of individuals with disabilities. The requirements of Section 504 apply in determining whether school districts have met their obligation to students with disabilities under Title II of the ADA. Schools have the burden of demonstrating that any removal from regular education is appropriate.

Maximum Feasible Integration

Using Standards as a Strategy for Reform

Schools violate Section 504 and ADA regulations whenever students with disabilities are denied the benefits of education reform standards. Standards-based education reform aims to attain high quality educational outcomes by identifying desired learning outcomes for students, shaping curricula and instruction accordingly, and holding schools accountable for the results. If a state or school system adopts standards for general education, then students with disabilities have the right to an education based on these same standards. Failure to apply standards to students with disabilities is a failure to provide "comparable benefits and services."

Linking Curriculum, Courses, and Instructional Strategies to the Standards Set for All Students

The goal of education reform is to make sure that students learn the curriculum which reflects education reform standards. Students with disabilities, like all other students, must be provided with courses and instruction that teach the curriculum. Otherwise, they will be denied comparable benefits and services in violation of Section 504 and the ADA.

For some students, the method of teaching some or all of the curriculum may need to be modified, perhaps an accommodation, or as a supplementary aid or service necessary for maximum feasible participation in regular education. For a small number of students

⁴ 34 C.F.R. 104.34(a).

⁵ 28 C.F.R. 35.130(d). See also 28 C.F.R. 35.130(b)(2) and 34 C.F.R. 104.34.

who have significant disabilities, it may be necessary to modify, adapt, or expand the curriculum or instruction to provide access to the standards. These decisions must be made on an individual basis, and based upon valid and competent individualized educational evaluations.

School systems must also identify and examine any policies or practices (“criteria or methods of administration”) that may have the effect of limiting students’ access to the courses and instruction necessary to learn the curriculum and meet the standards. Any number of policies and practices might have this effect. Examples include lack of coordination (in terms of both scheduling and content) between pull-out programs such as resource rooms and the mainstream academic curriculum; providing a diluted curriculum in separate programs and classes for students with disabilities; and failing to integrate special education supports and related services into regular education classes.

Using Assessment for School Accountability

The purpose of education reform assessments (often called “large-scale” assessments) is to gather information that shows whether schools are successfully teaching students the standards. This information is then used to identify weaknesses in schools and to make necessary improvements. Assessment is the way standards-based education

holds schools accountable for student learning and achievement.

Historically, large numbers of students with disabilities have been excluded from assessments. As a result, information about the achievement of these students is often missing when evaluating the effectiveness of school programs and making decisions about policies, resource allocation, and reform initiatives. When they are excluded from assessment, schools are not held accountable for the quality of education students with disabilities receive. These students are denied the benefit of this critical aspect of standards-based education reform, in violation of the requirement to provide comparable benefits and services under Section 504 and the ADA.

These laws also require schools to provide any accommodations and modifications students need to participate in assessments. Many students will not require any changes in the way that the assessment is given. Others will need accommodations, such as extra time or provision of materials in a different format (e.g., Braille, large print, a reader), in order to participate. A relatively small percentage of students may require an alternate assessment to demonstrate their knowledge and skills in a nondiscriminatory manner. For example, some students may need a “hands-on” test using models rather than a pencil and paper test to show their understanding of geometry, and some students may require a portfolio assessment.

Information in this **Fact Sheet** is based on the *PEER Information Brief*, “Section 504, the Americans with Disabilities Act, and Education Reform” by the PEER Project.

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