

# Students with Special Health Care Needs

- *Section 504*

## A. Regulations

### **34 CFR 104.4 *Discrimination Prohibited***

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

### **34 CFR 104.3 (j) *Handicapped Person***

Handicapped person means any person who:

- (i) has a physical or mental impairment that substantially limits one or more major life activities,
- (ii) has a record of such an impairment, or
- (iii) is regarded as having such an impairment.

### **34 CFR 104.3 (j) (ii)**

Major life activities, under Section 504, means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

### **34 CFR 104.3 (k) (2)**

With respect to public preschool elementary, secondary, or adult educational services, a handicapped person would be eligible if he/she were:

- (i) of an age during which nonhandicapped persons are provided such services,
- (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or
- (iii) meeting the requirements of state-required free, appropriate education under section 612 of the Education of the Handicapped Act.

*[Note: For school districts, this applies to all school-age persons with disabilities, ages 3 through 21.]*

### **34 CFR 104.34 *Educational Setting***

Academic Settings. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 104.37 (a) (2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question. Districts must provide equal opportunity in areas such as counseling, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies, and employment.

### **34 CFR 104.37 *Nonacademic Services***

(a) General.

(1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies that provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics. 1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses

or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

## B. Overview

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA) are the three primary federal laws relating to students with disabilities. All three have requirements that apply to the school setting. Section 504 and ADA prohibit discrimination against all persons with disabilities, including students, parents, and staff members. IDEA assures the provision of additional specially designed instruction and services to children who are eligible under the law. By fulfilling responsibilities under IDEA and state law, a district is also meeting the requirements of Section 504 and ADA.

## C. Background/Rationale

While Section 504, ADA, and IDEA assure equal access to public education services for all children with disabilities, only some children are eligible for services under IDEA. IDEA defines as eligible only students who have certain specified types of disabilities and who, because of one of those conditions, need specially designed instruction that is different than that provided in the general curriculum. For a child to be eligible for IDEA services, he or she must have both a disability and a need for special education.

In contrast, Section 504 protects all qualified students with disabilities and defines as disabled those having any physical or mental impairment that substantially limits one or more major life activities, including learning. Section 504 and ADA cover all students who meet this definition even if they do not fall within the IDEA-enumerated categories and even if they do not need specially designed instruction.

Health conditions that might potentially be considered as disabling under Section 504, but are not typically covered under IDEA, include communicable diseases (HIV, tuberculosis), medical conditions (asthma, allergies, diabetes, heart disease), temporary

medical conditions due to illness or accident, drug/alcohol addiction, and other conditions.

It should be noted that one major difference between IDEA and Section 504 is the allocation of funds. The federal government and the Oregon Department of Education both provide additional funding for the provision of services under IDEA. Section 504, on the other hand, is strictly a civil rights law and therefore is the fiscal responsibility of the general education system. As such, school district administrators are responsible for implementation of Section 504 plans. Failure to comply with Section 504 may result in loss of all federal funds to the district. IDEA funds may not be used in the implementation of Section 504 plans.

## D. Guidance

### Roles and Responsibilities

#### *Comprehensive School Health Education*

Health educators provide training for students and staff on the etiology and social implications of disability, including harassment prevention.

#### *School Counseling, Psychological, and Social Services*

The school counselor, child development specialist, psychologist, or other related mental health care provider may provide counseling related to the presence of the disability for both students and family members.

#### *Family and Community Involvement*

Parents have a responsibility to inform the school about the child's condition and needs at the time of initial registration and whenever the student's condition changes. Parents participate as part of the educational team. The school makes families aware of resources available in the community for students with disabilities.

#### *Healthy School Environment*

School district policies are in place that ensure access to all educational programs and extracurricular activities in a safe school environment. Individualized evacuation plans are developed by appropriate school health services personnel knowledgeable about the student's disability. Individual evacuation plans become part of the school safety plan.

#### *School Nutrition Services*

Nutrition services personnel coordinate special diets and modifications to diets needed as a result of the child's disability within the school food services program.

#### *Physical Education*

Modification and adaptations of general physical education programs assure access for those who can participate. Adaptive physical education programs are developed for students who are not able to participate in general PE with modifications.

### *School Health Services*

School health services personnel assess and implement health components of the Section 504 plan and participate in the multidisciplinary team process to develop plans that address student needs.

## Procedures

If the child has a disability or is suspected to have a disability, IDEA and Section 504 both require that an evaluation of the student's performance and educational needs be completed. Both laws require that the local education agency develops and implements a plan for the delivery of all needed services, including related services such as occupational therapy, physical therapy, nursing, and other health-related services. If a student is eligible for special education under IDEA, there are significantly greater requirements for assuring parent involvement, due process, and periodic review.

It is important to remember that all procedures, documentation requirements, and supervision and training recommendations contained in this manual should be applied when health services are needed by students who are IDEA- or Section 504-eligible. If a school provides counseling on sexually transmitted diseases to all other students in the school, that counseling should also be available to all students with disabilities. Development of the individualized Section 504 plan should derive from the child's inability to access the school program.

Section 504 implementation is the responsibility of the local education agency. While there are no statutory rules for identification of Section 504-eligible children, districts need a system to assure that procedures are in place for evaluation, planning, implementation, and annual review of plans for Section 504-eligible students. Each educational entity must have a designated Section 504 officer who manages planning and implementation of plans for students with disabilities. If the family of a student with a disability who is served under Section 504 believes that discrimination is occurring or that the student is not receiving needed services, compliance would be assured by the regional Office of Civil Rights.

The process for implementing Section 504 protections should include:

1. A group of persons knowledgeable about the student (e.g., a multidisciplinary team) meets to determine whether the impairment substantially limits a major life activity as noted above. When determining eligibility or accommodations, the team should:
  - Draw upon information from a variety of sources;
  - Assure that all information is documented and considered;

- Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options; and
  - Ensure that the student is educated with his/her nonhandicapped peers to the maximum extent appropriate.
2. If the team determines that a major life activity (e.g., learning) is substantially limited, a plan is developed specifying reasonable accommodations allowing the student an education comparable to that of nonhandicapped students.
  3. The designated Section 504 officer maintains a record of Section 504 decisions, according to procedures determined by the district.
  4. The Section 504 officer shares these plans with each building administrator and the classroom teacher, except if such information compromises the student's legal right to privacy.

### *Staff Development Needed*

1. Staff training should be provided on the following:
  - An overview of IDEA and Section 504, and differences between the two laws;
  - The role of the educator in planning for students with disabilities;
  - Disability awareness;
  - Issues of integration of students with disabilities into the school community; and
  - Training of emergency procedures, evacuation procedures, and health protocols for students with disabilities.
2. Educators who work directly with children with disabilities should have access to appropriate resources.
3. Educators who provide services to children with disabilities should receive ongoing training and supervision.

## E. Oregon Resources

Discover IDEA CD available from the Oregon Department of Education's Office of Special Education (503-378-3600)

Oregon Department of Education, [www.ode.state.or.us](http://www.ode.state.or.us)

*Student Access: Section 504 of the Rehabilitation Act of 1973*, Oregon Department of Education, 1990. \$3.50. Order from the website at [www.ode.state.or.us/pubs/orderform.htm](http://www.ode.state.or.us/pubs/orderform.htm), or by phoning the ODE Documents Sales Clerk at 503-378-3600, extension 4498.

*Special Education: A Guide for Parents and Advocates*, 4<sup>th</sup> edition, Oregon Advocacy Center, 1999.

## F. National Resources

Code of Federal Regulations (CFR),  
[www.access.gpo.gov/nara/cfr/waisidx\\_01/34cfr104\\_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr104_01.html)

Meeting the Needs of All Students, Florida Department of Education, 1994,  
[www.theteachersguide.com/504.html](http://www.theteachersguide.com/504.html)

OSEP IDEA Partnerships, [www.ideapractices.org](http://www.ideapractices.org)

Section 504 and ADA, CASE: Council of Administrators of Special Education, Inc., 1999.

U.S. Office of Civil Rights, Region X  
King County Courthouse  
Room E-224  
Third Avenue  
Seattle, WA 98104  
206-296-7592  
800-362-1710