



EDUCATION IS FOR ALL CHILDREN
A Guide for Parents



SECTION 504
AND
AMERICANS WITH DISABILITIES ACT

Protections for Children with Disabilities



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This booklet is dedicated to Lee Ann Vaught.

After Glow

I'd like the memory of me
to be a happy one.
I'd like to leave an after glow
of smiles when life is done.
I'd like to leave an echo
whispering softly down the ways,
Of happy times and laughing times
and bright and sunny days.
I'd like the tears of those who grieve,
to dry before the sun
of happy memories
that I leave when life is done.

Anonymous

Lee Ann Vaught was a positive force for good, who worked tirelessly on behalf of the children she represented. She was a born advocate and teacher.

In fact, Lee began her career as a teacher. After graduating from the University of Mississippi with a major in journalism and English, Lee taught language arts at the middle school level and later taught English and Journalism at the high school level. After teaching at Dominican High School in New Orleans for eight years, Lee felt that she could continue to affect the lives of students in a positive but different way by becoming a lawyer/advocate.

After graduating from Loyola School of Law in 1996, Lee went to work for the New Orleans Legal Assistance Corporation as a Staff Attorney. In the Fall of 1998, Lee joined the staff of the Advocacy Center where she was able to get fully immersed in Special Education law. She had come back to her first love- helping children to reach their full potential through advocacy that was based on solid legal principles and a warm heart. Not very long after Lee joined the Advocacy Center's staff, she was promoted from Staff Attorney to Managing Attorney and took over leadership of AC's Special Education Issue Group. Lee took her work seriously and worked long hours on behalf of her young clients.

Yet, she never let the seriousness of the work she did cloud her days. Everyone at the Advocacy Center, where she worked for over ten years, envied those who were part of Lee's Special Education Issue Group because, whenever they met, the rest of us could hear loud and raucous laughter echoing through the office.

Lee died an untimely death, from cancer and related complications, at age 47 on August 4, 2008. In the sentiment of the poem quoted above, Lee Ann Vaught would want those of us left behind to remember her with happy memories. No problem, Lee. You brought happiness and laughter to all the lives you touched during your short stay on this earth. We dedicate this booklet to you.

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SECTION 504 OF THE REHABILITATION ACT OF 1973

INTRODUCTION

Under Section 504, "**No qualified handicapped person may be excluded from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable**". This means that because all public schools are recipients of federal funds, a student with a disability who is enrolled in a public school program is protected from discrimination by that program. Section 504 applies to programming and physical accessibility of elementary, secondary, and post-secondary schools. While there is some overlap between the concepts, "program accessibility" generally refers to making substantive program options available to all students, whereas "physical accessibility" refers to removal of physical barriers.

A sample request for a Section 504 evaluation is included at the end of this section.

PARENTS WITH DISABILITIES AND SECTION 504

Section 504 applies to parents as well as students. When a parent with a disability attends a school function, the parent is considered a "qualified handicapped person" and is eligible for "other services" which are to be provided by the school system in accordance with Section 504. For example, a hearing impaired parent of a student must be provided with an interpreter (or other necessary accommodations), which would allow the parent to be able to fully participate in the school functions.

STUDENTS WITH DISABILITIES AND SECTION 504

Section 504 requires that all public elementary or secondary education programs provide a free appropriate public education to each "qualified handicapped person," who is within the jurisdiction of that school regardless of the nature or severity of the person's disability. Some definitions that are important to understand in relation to section 504 are as follows:

"Handicapped Person" is defined as any person who:

- (a) has a physical or mental impairment which substantially limits one or more major life activities (including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working);
- (b) has a record of such impairment, or
- (c) is regarded as having such an impairment.

“Qualified Handicapped Person”, with respect to public educational services, is defined as a person with a disability who is:

- (a) of an age during which persons without a disability are provided such services;
- (b) of any age during which it is mandatory under state law to provide such services to persons with a disability, or
- (c) to whom a state is required to provide a free appropriate public education under 612 of the Individuals with Disabilities Education Act.

“Appropriate Education” is the provision of educational services that are designed to meet the educational needs of a child with a disability as adequately as children without disabilities. An *appropriate education* may include the provision of assistive technology devices and services if that would be necessary for a child with a disability to receive the same benefit from his or her program as a student without a disability.

Section 504 also applies to nonacademic and extracurricular services. These services should be provided in a manner that will allow students with a disability an equal opportunity for participation in those services. Some of these activities and services may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies which provide assistance to persons with disabilities, and employment opportunities.

PROGRAM ACCESSIBILITY

Under Section 504, a student with a disability must have an equal opportunity to participate in his/her school's services and activities such as: counseling, athletics, transportation, health services, school-sponsored clubs, vocational programs, and social activities. These services must be offered in a way that gives students with disabilities an equal opportunity for participation.

In order to provide program accessibility, structural changes may be necessary. However, Section 504 does not necessarily require that each and every part of an existing facility be made accessible, nor does Section 504 necessarily require that structural changes be made where other methods are effective in achieving program accessibility. Compliance with this requirement may be achieved in a number of ways; however, priority must be given to methods that will assure that children receive services in the most integrated setting appropriate for the student. State law

also requires that school systems give priority to those methods and activities (i.e., reassignment of classes) that offer programs and activities to persons with disabilities in the most appropriate integrated setting.

Program accessibility may be accomplished through one of the following ways:

- alteration of existing facilities;
- non-structural changes;
- redesign of equipment;
- assignment of communicative aids;
- reassignment of classes or other services to accessible buildings;
- assignment of aides to children;
- home visits; and
- delivery of health, welfare, or other social services at alternative accessible sites.

As noted, structural changes in facilities may not need to be made where other methods effectively ensure program accessibility.

PHYSICAL ACCESSIBILITY

Under Section 504, "Construction of new facilities (after June 3, 1977) as well as alterations that could affect access to, and use of existing facilities, must be designed and constructed so that the facility is accessible to and usable by handicapped persons."

Alterations to facilities should provide physical accessibility "to the maximum extent feasible." Recipients of federal funds must comply with the American National Standards Institute, Inc. (ANSI) standards for making buildings accessible. The ANSI standards do provide for waivers that allow the use of other methods that accomplish accessibility; therefore, departures from the ANSI standards are permitted.

Under state law, all newly constructed facilities must meet ANSI standards and be readily accessible to, and usable by, persons with disabilities.

SECTION 504 & RELATED SERVICES

In addition to physical and program accommodations as discussed above, Section 504, in its definition, includes related aids and services. Recent cases have held that certain services and devices are necessary for children with disabilities who, although they are not in special education, are eligible under section 504.

Some examples of services that 504 may include are:

- instruction in Braille and its uses,
- services addressing language and communication needs,
- behavioral strategies, or
- adapted computer equipment.

For a school to be required to provide a related service under 504, the service must be necessary to ensure the child has access to the same educational program students without disabilities.

HOW SECTION 504 DIFFERS FROM IDEA

Both Section 504 and IDEA are aimed at eliminating discrimination against children with disabilities in public education systems and institutions. However, IDEA defines eligibility for services in terms of discreet and defined categories of eligibility that exclude some children with disabilities. Because Section 504 has an extremely broad definition of "handicapped," it protects many students who are not eligible for special education services under IDEA. For example, a student with an orthopedic disability who is in regular education is protected by Section 504, as is a child diagnosed with Attention Deficit Disorder (ADD) whose disability is deemed not to meet certain classification criteria (such as learning disabled or behavior disordered) that are necessary to receive special education services. Also protected by Section 504 are children who are "perceived" as disabled, such as children who are HIV positive or who are hepatitis carriers.

Section 504 guidelines for education services are similar to those of IDEA. Section 504 guidelines state that an **appropriate education** is providing regular or special education and related aids and services so that:

- Education services are designed to meet "handicapped" children's individual educational needs as adequately as the needs of "non-handicapped" persons.
- Each "handicapped" child is educated with "non-handicapped" children, to the maximum extent appropriate to the needs of the "handicapped" child.
- Nondiscriminatory evaluation and placement procedures are established to guard against misclassification or misplacement of students, and a periodic reevaluation is conducted of students who have been provided special education and related services.

- Due process procedures are established so that parents and guardians can review evaluation and placement decisions made concerning their children and can participate and be represented by counsel in any impartial hearing.

There are other distinctions between the protections of Section 504 and the IDEA. IDEA regulations outline the fiscal, administrative, and programmatic standards by which "free appropriate public education" is provided to children with disabilities. Section 504, on the other hand, covers all services and programs that are generally made available to children without disabilities, and specifies that a child without a disability may not be provided with less than his or her non-disabled peers. For example:

- In contrast to IDEA, which is federally funded, Section 504 does not provide federal funds or directly control distribution of such funds.
- IDEA covers those children with disabilities aged three to twenty-one whereas Section 504 implicates rights of "handicapped" persons of all ages.
- The responsibility for the enforcement of Section 504 rests with the Office for Civil Rights, Department of Health and Human Services. The Department of Education is responsible for the implementation of the IDEA.
- IDEA requires that an IEP be developed for each child, Section 504 does not, though children who are eligible for Section 504 services should have a 504 plan setting forth accommodations that the child may need.
- Finally, unlike IDEA, the Section 504 regulations do not establish an administrative due process hearing and appeals mechanism.

Complaints for violations of the requirements of Section 504 may be filed with the U.S. Department of Education's Office of Civil Rights (OCR).

For 504 complaints, contact:

Office of Civil Rights, Southern Division
U.S. Department of Education
999 Bryan Street, Ste. 1620
Dallas, TX 75201.
Phone: (214) 661-9600

You can also file an OCR complaint online at:

<http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>.

SAMPLE LETTER

**REQUESTING A SECTION 504 EVALUATION
(Be sure to keep a copy for your records)**

(Date)

(Name of Superintendent or Section 504 Coordinator)

(Name of School System)

(Address)

Dear (Name of Superintendent Coordinator)

I am the parent of (name of student). I believe that s/he needs to be evaluated for services under Section 504 of the Rehabilitation Act of 1973.

I believe my child needs this evaluation because (give reasons) (see examples below).

I understand that the school must conduct a Section 504 evaluation of the needs of children with disabilities and devise appropriate programs for them, even if they are not eligible for special education under IDEA.

Thank you for your help. I look forward to hearing from you within five school days of the date you receive this letter.

Sincerely,

(Parent's name, address, and telephone number)

cc: (School Principal)

Examples:

1. Amy has an orthopedic impairment, which limits her use of her hands. She needs accommodations in order to participate in a regular classroom.
2. Brian has been diagnosed as having ADHD. Because of this disability, he may need a specialized program.

RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act, which became effective in January 1992, takes Section 504 a step further. The ADA applies not only to federal programs and services and to places of employment that receive federal funds, but also to privately owned businesses that provide accommodations and services. It requires all public accommodations - including school buildings – to be accessible to persons with disabilities. Thus, a student cannot be denied placement in his or her neighborhood schools because the buildings are inaccessible. The ADA requires that reasonable accommodations be provided to a student that will enable him or her to attend and benefit from any educational programs. Further, like Section 504 of the Rehabilitation Act, the ADA applies to parents who must conduct business on school premises as well as to students.

To inquire about the regulations regarding the accessibility requirements of a particular building, contact the Louisiana State Fire Marshal's Office. They can be reached at:

Louisiana State Fire Marshal's Office
8181 Independence Blvd.
Baton Rouge, LA 70806
1-800-256-5452
<http://lasfm.org/>

Specific accessibility guidelines and information can be found through the Fire Marshal's office at www.dps.state.la.us/sfm. Information can also be found by contacting the United States Department of Justice ADA hotline at 1-800-514-0301, or at www.ada.gov.

REQUESTING ACCOMMODATIONS AND SUBSEQUENT ACTIONS

A parent who believes that his/her child may need or qualifies to receive special educational services under Section 504/ADA should approach the child's teacher to see if s/he has noted the same types of behaviors as the parent. The parent may also ask the child's principal who is responsible for evaluating children under 504/ADA and then write that person a letter requesting that the child be evaluated. The School Building Level Committee (SBLC) decides if the child qualifies for Section 504 assistance. If a parent makes a request to the SBLC to have a child evaluated and nothing happens, s/he should contact the Parish Coordinator for Section 504/ADA. (In order to find out who the parish coordinator is for the parent's district, contact Families Helping Families at 1-800-776-7736.) Finally, if after contacting the parish

coordinator the parent is still dissatisfied with the school's efforts in addressing the request, the parent may want to file a complaint with the office of Civil Rights.

For more information concerning the Americans with Disabilities Act of 1990 (ADA) see: 42 U.S.C. §12101; 34 C.F.R. §104. For more information concerning Section 504, see: 29 U.S.C. §701-794; 28 C.F.R. §35; and 28 C.F.R. §36.