CHAPTER 7

Section 504 of the Rehabilitation Act of 1973

In this chapter, you will learn about the rights under Section 504 of the Rehabilitation Act, as contrasted with the rights under the Individuals with Disabilities Education Act (IDEA). You will learn that Section 504 does not require public schools to provide a special education program that is individualized to meet the needs of a child with a disability, with the goal of enabling the child to become independent and self-sufficient. You will also learn that the child with a Section 504 Plan[1] does not have the legal protections available to the child who has an IEP under the IDEA.

Except for accessibility of buildings, and modifications and accommodations in testing, Section 504 provides fewer protections and benefits to children with disabilities than IDEA. You will find selected portions of Section 504 at the end of this chapter.

The key portion of **Section 504 of the Rehabilitation Act** states:

> No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely **by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination** under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service . . .[2]

One important benefit of Section 504 relates to legal remedies if a school district discriminates, excludes, or retaliates against a parent, child or school district employee for exercising their rights.[3] In addition, a complaint to the Office of Civil Rights under Section 504 can be more effective than a complaint to the state department of education under IDEA.

Purpose

Section 504 is a broad *civil rights* law. The law applies to students and other individuals with disabilities, parents, and also to school district employees. A Section 504 case is often known as 1983 action.[4]

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1 A "Section 504" Plan does not have to be written and does not require parental agreement. See the 504 Regulations at 34 CFR 104.31-104.39 at www.wrightslaw.com/law/504/sec504.regs.pdf. See the sample 504 Plan at www.dredf.org/section504.html (Retrieved October 9, 2006)

2 29 U. S. C. § 794(a)

3 For cases filed against school districts by teachers and other school personnel, go to www.wrightslaw.com/info/sec504.index.htm

4 Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . . (42 U. S. C. § 1983)

The purpose of Section 504 is to protect individuals with disabilities from discrimination for reasons related to their disabilities. Prohibited discrimination includes exclusion from school activities, the unnecessary provision of unequal or separate services, and disability harassment. Examples include not allowing children with disabilities to participate in school field trips, sending children with disabilities home from school earlier than nondisabled children, and retaliating against parents and school employees who advocate for children with disabilities.

The purpose of the Individuals with Disabilities Education Act is "to ensure that all children with disabilities have available to them a free, appropriate education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living . . ."[5] Section 504 does not ensure that the child with a disability will receive an individualized educational program designed to meet the child's unique needs and provide the child with educational benefit, with the goal of preparing the child for "further education, employment and independent living."

Protection from Discrimination

Section 504 protects individuals with disabilities from discrimination. Children who receive special education services under IDEA are automatically protected by Section 504. The child with a disability who has a 504 Plan does not have the same procedural protections available to children with disabilities and their parents under IDEA.

Accommodations, Modifications and Services

Under Section 504, the child with a disability may receive accommodations and modifications that are not available to nondisabled children. All children with disabilities who receive special education and related services under IDEA are entitled to these accommodations, modifications and services.

Eligibility

To be eligible for protections under Section 504, an individual must have a physical or mental impairment that substantially limits at least one major life activity. Examples of major life activities are walking, seeing, hearing, speaking, breathing, reading, writing, performing math calculations, working, caring for oneself, performing manual tasks, and other activities.

If the child has an "impairment" that "substantially limits" one or more major life activities (like reading, writing, performing math calculations, walking, hearing, or self care), but does not *need* special education services, the child is eligible for protections under Section 504.

Section 504 requires the school to perform an evaluation that draws information from a variety of sources. The school may develop a 504 Plan but the plan does not have to be written. Section 504 does not require a meeting before a change in placement.

Confusion about Rights and Benefits

Some parents and educators believe that a child who is eligible for special education and related services under IDEA must be placed in special education classes, while a child with a 504 Plan may remain in regular education classes. Relying upon this inaccurate information, school personnel often advise parents that their children will be better served with a 504 Plan, not an IEP.

Do you remember what IDEA says about educating children with disabilities in the "least restrictive environment?" Children with disabilities are to be educated with children who are not disabled "to the maximum extent

5 See Purposes of IDEA in Section 1400(d).

appropriate." Educating children in special classes, separate schools, or removing children with disabilities from the regular education environment should only occur when the school cannot educate the child in regular classes with supplementary aids and services.

Remember: Special education is a service, not a place or placement.[6]

Access v. Educational Benefit

To clarify the differences between the laws, change the facts. Assume that your special needs child uses a wheelchair. Under Section 504, your child shall be provided with **access to an education.** Reasonable modifications may be made to the school building. Your child may receive "reasonable" accommodations when taking tests. The child may have the services of an aide to assist in the bathroom. The purpose of these modifications, accommodations and services is to provide the child with access to an education.

Under Section 504 regulations, a "free appropriate public education" is "the provision of regular or special education and related aids and services that . . . are designed to meet individual educational needs of persons with disabilities **as adequately as the needs of persons without disabilities are met** . . ." (34 C.F.R.§ 104.33(b)(1))

Now assume that your child who uses a wheelchair also has neurological problems that adversely affect the child's ability to learn. Under the IDEA, in addition to access, your child is entitled to an education that is designed to meet the child's unique needs and from which the child receives educational benefit. Under Section 504, the child has access to the same free appropriate public education that is available to children who are not disabled.

Discipline

Children with Section 504 Plans and those with IEPs have some protections in school discipline incidents. If the child with a Section 504 Plan misbehaves and the school decides the child's behavior is not a manifestation of the disability, the school can expel the child, just as they can expel a nondisabled child. Under IDEA, the school must continue to provide the child with a free, appropriate education, even if the child is suspended or expelled from school.

Procedural Safeguards

Section 504 does not include a clearly established "Prior Written Notice" requirement.[7] In contrast, IDEA includes an elaborate system of procedural safeguards designed to protect the child and parents. These safeguards include written notice before any change of placement and the right to an independent educational evaluation[8] at public expense. Section 504 does not include these protections.

Impartial Hearings

Section 504 and IDEA require school districts to conduct impartial hearings when parents disagree with their child's identification, evaluation, or placement. Section 504 also permits a hearing to review alleged discrimination. Under Section 504, the parent has an opportunity to participate and obtain representation by counsel. The details are left to the discretion of the school district and hearing officer. Contrast this with the detailed procedural safeguards in Section 1415 of the Individuals with Disabilities Education Act.

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6 See Regulation 300.39.

7 See Regulation 300.503.

8 See Regulation 300.502.

In Summation

In this chapter, you learned about Section 504 of the Rehabilitation Act and how it differs from the Individuals with Disabilities Education Act.[9] You learned that Section 504 focuses on accommodations, modifications, services, and improved building accessibility to provide access to education.

You learned that Section 504 does not require public schools to provide an educational program that is individualized to meet the needs of a disabled child with the goal of enabling the child to become independent and self-sufficient. You learned that the child with a Section 504 Plan does not have the protections that are available to the child who has an IEP under the IDEA.[10] To learn more about Section 504, go to www.wrightslaw.com/info/sec504.index.htm or enter the term into the search box at www.wrightslaw.com

You will find key portions of Section 504 of the Rehabilitation Act below.

In the next chapter, you will learn about important features in the No Child Left Behind Act and how Congress aligned the Individuals with Disabilities Act with the No Child Left Behind Act.

Section 504 of the Rehabilitation Act of 1973 29 U. S. C. 701 *et seq.*

29 U. S. C. § 701. Findings; purpose; policy

(a) Findings. Congress finds that--

(1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;

(2) individuals with disabilities constitute **one of the most disadvantaged groups in society**;

(3) **disability is a natural part of the human experience** and in no way diminishes the **right of individuals** to

(A) live independently;

(B) enjoy self-determination;

(C) make choices;

(D) contribute to society;

(E) pursue meaningful careers; and

(F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;

(4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce investment systems under title I of the Workforce Investment Act of 1998 [29 U. S. C. 2801 et seq.] that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under title I, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and

(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to-

9 See "Comparison of IDEA, Section 504 and ADA" at www.cde.state.co.us/cdesped/download/pdf/504Comparison.pdf and "An Overview of ADA, IDEA and Section 504" at http://ericec.org/digests/e606.html (Retrieved on October 9, 2006)

10 To learn more about Section 504 and discrimination, go to www.wrightslaw.com/info/sec504.index.htm or enter the terms into the search box at www.wrightslaw.com

(A) make informed choices and decisions; and

(B) achieve **equality of opportunity, full inclusion and integration** in society, employment, independent living, and economic and social self-sufficiency, for such individuals.

(b) Purpose. The purposes of this chapter are--

(1) to empower individuals with disabilities to **maximize employment, economic self-sufficiency, independence, and inclusion and integration into society**, through--

(A) statewide workforce investment systems implemented in accordance with title I of the Workforce Investment Act of 1998 (29 U. S. C. 2801 et seq.) that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

(B) independent living centers and services;

(C) research;

(D) training;

(E) demonstration projects; and

(F) the guarantee of equal opportunity; and

(2) to ensure that the Federal Government plays a leadership role in **promoting the employment of individuals with disabilities**, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living.

(c) Policy. It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of--

(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

(3) inclusion, integration, and full participation of the individuals;

(4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and

(5) support for individual and systemic advocacy and community involvement.

29 U. S. C.§ 705. Definitions

For the purposes of this chapter:

. . .

(20) Individual with a disability

(A) In general. Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who -

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to subchapter I, III, or VI of this chapter.

(B) Certain programs; limitations on major life activities. Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 701, 711, and 712 of this title, and subchapters II, IV, V, and VII of this chapter, any person who -

(i) has a physical or mental impairment which substantially limits one or more of such person's

major life activities;

(ii) has a record of such an impairment; or

(iii) is regarded as having such an impairment.

(C) Rights and advocacy provisions

(i) In general; exclusion of individuals engaging in drug use. For purposes of subchapter V of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Exception for individuals no longer engaging in drug use. Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who -

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

(iii) Exclusion for certain services. Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under subchapters I, II, and III of this chapter, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

(iv) Disciplinary action. For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

Furthermore, the due process procedures at section 104.36 of title 34, Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.

(v) Employment; exclusion of alcoholics. For purposes of sections 793 and 794 of this title as such sections relate to employment, the term "individual with a disability" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) Employment; exclusion of individuals with certain diseases or infections. For the purposes of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(E) Rights provisions; exclusion of individuals on basis of homosexuality or bisexuality. For the purposes of sections 791, 793, and 794 of this title -

(i) for purposes of the application of subparagraph (B) to such sections, the term "impairment" does not include homosexuality or bisexuality; and

(ii) therefore the term "individual with a disability" does not include an individual on the basis of homosexuality or bisexuality.

(F) Rights provisions; exclusion of individuals on basis of certain disorders. For the purposes of sections 791, 793, and 794 of this title, the term "individual with a disability" does not include an individual on the basis of-

(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

(G) Individuals with disabilities. The term "individuals with disabilities" means more than one individual with a disability.

. . .

(37) Transition services. The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

. . .

29 U. S. C. § 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations. **No otherwise qualified individual with a disability** in the United States, as defined in section 705(20) of this title, **shall, solely by reason of her or his disability, be excluded** from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity **receiving** Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined. For the purposes of this section, the term "program or activity" means all of the operations of-

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)

(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

(i) if assistance is extended to such corporation, partnership, private organization, or sole propri-

etorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers. Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section. The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U. S. C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

29 U.S.C. § 794a. Remedies and attorney fees

(a)

(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.