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## ABSTRACT

Presented in a question-and-answer format, this paper discusses educational requirements under Section 504 of the Rehabilitation Act of 1973. It addresses: (1) eligibility for a 504 accommodation plan; (2) what is meant by reasonable accommodation; (3) what is meant by the "substantially limit a major life activity" standard; (4) the "major life activity" provision; (5) differences between special education and Section 504; (6) the eligibility of some students for Section 504 accommodations and special education services; (7) the ineligibility of some students who are receiving Section 504 services for special education services; (8) out-of-level testing; (9) limited English proficient students; (10) what is meant by the law's requirement that a student must be regarded by others as having an impairment for 504 accommodations; and (11) documentation of a disability. The paper closes with a list of examples of adaptations that are allowed for Section 504 accommodation plans and those that are not allowed. (CR)

# SECTION 504 of the Rehabilitation Act of 1974,

## AIMS and Stanford 9



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## **SECTION 504**

### **What is Section 504?**

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance. Section 504 covers eligible students, employees and other individuals with disabilities for reasonable accommodations that eliminate discrimination and enable them to work or learn.

### **Who is eligible for a 504 Accommodation Plan?**

To be eligible, an individual must:

1. have a mental or physical impairment which substantially limits one or more of life's major activities. Major life activities include functions such as caring for ones' self, walking, seeing, speaking, learning, performing manual tasks, working, hearing or breathing.

When a condition does not substantially limit a major life activity, the individual does not qualify for protection under Section 504.

2. have a record of such an impairment; or
3. be regarded as having such an impairment.

Numbers two and three only become factors if discrimination has occurred because of the record or history.

### **What is an accommodation?**

Accommodations are provisions made in *how* a student accesses and demonstrates learning. These do not substantially change the instructional level, the content or the performance criteria. The changes are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known.

### **What is meant by reasonable accommodation?**

Courts have required accommodations that achieve "meaningful equal opportunity." Alteration of the test's content is a substantial modification that is not required under Section 504. Accommodations need to take into account both the functional limitations of the individual and the alternative methods of performing tasks or activities which would permit people of varying abilities to participate without jeopardizing outcomes. Examples of accommodations are modified homework requirements, provision of readers, provision of taped textbooks, changes in the way tests are given, provision of a teacher's aide or seating in the front row of the classroom.

## Guidelines

- ◆ Accommodations must be individualized.
- ◆ The individual needs of the persons with a disability should be met to the same extent as the needs of persons without handicapping conditions.
- ◆ Changes can be made to regular programs or the provision of different programs may be necessary.
- ◆ Accommodations should allow the Section 504 student an equal level of access to the student without a disability.
- ◆ An accommodation must be necessary, not just helpful.

Accommodations are only appropriate for those students who, because of a significant circumstance or disability, require some change in the testing environment or process to be able to demonstrate what they actually know and can do on state assessments.

Stated in another way, it is not the student's ability, knowledge or skill that should determine the accommodation but, rather, it is the student's need for an accommodation so he/she has the opportunity to demonstrate his/her understanding, knowledge or skill in the domains being taught and tested.

### What does "substantially limit a major life activity" mean?

There is no quantifiable standard for "substantially limit a major life activity." To determine whether a student's learning is substantially limited, the Section 504 Accommodation Team should consider more than just a student's overall academic performance rather than a single subject area. Both academic and non-academic activities need to be considered.

### What is meant by the term "major life activity?"

"Major life activities" has been interpreted by the courts as global activities, not subsets of global activities. For example, learning is a major life activity. The study of mathematics is a subset of learning as are reading, writing, organizational skills, etc. Walking is a major life activity. Running, jumping, crawling and hopping do not qualify, as they are subsets of walking. To qualify for a Section 504 Plan, a student must have a physical or mental impairment that substantially limits learning, not a subset of learning. There are other major life activities that could impinge learning and could possibly require an accommodation.

What are some of the differences between Special Education (PL94-142) and Section 504?

Section 504	Special Education
Intended to “level the playing field” - usually eliminating barriers that exclude persons with disabilities by providing accommodations	Intended to “level the playing field,” but is remedial by involving special programs and/or services
Unfunded – local responsibility	Funded
Very broad definition of what constitutes a disability	Narrow definition of what constitutes a disability
Membership composition in accommodation team is not prescribed	Membership composition in IEP Team is prescribed
Parents do not have to participate in the development of Section 504 Accommodation Plan.	Parents must participate in the development of the IEP.
Notice is required before a “significant change in placement.”	Written notice is required prior to any change in placement.

Could some of the impairments listed above result in eligibility for Special Education?

Yes, they could. In some instances, there is a fine line between Special Education and Section 504. Special Education has been around for 25 years and has been well defined by court cases and research. The difference can be defined by the severity of the disability and whether the student would be denied access to an education because of the failure to provide services; or if the student needs specially designed instruction. Remember that Section 504 is a civil rights act enforced by the U. S. Department of Education, Office of Civil Rights (OCR). Failure to provide accommodations under Section 504 for a student with a disability is a violation of the student’s civil rights. Do what is in the best interest of the student.

Are students who have been receiving services under IDEA (Special Education) automatically eligible for Section 504 Protection?

Not automatically. Section 504 and IDEA are not intended to serve the same students the same way. Section 504 provides protection against discrimination based on disability and IDEA provides for an individualized education program to meet the unique educational needs of a disabled child. If a student “tests out” of Special Education, the student would have

to meet the same criteria for a Section 504 Accommodation Plan that applies to all students.

Is an IEP or Accommodation Plan required?

A written IEP is required for Special Education students. Accommodations are required for Section 504 students if they are required to eliminate discrimination.

Can a Section 504 Accommodation Plan specify out-of-level testing for a student?

No. Out-of-level testing is a modification, not an accommodation and can not be specified as an accommodation on a student's Section 504 Accommodation Plan. Students with disabilities serious enough to require out-of-level testing would qualify for Special Education services.

Can a Section 504 Team decide that a modification is appropriate for a student?

No. Modifications are substantial changes in *what* a student is expected to learn and to demonstrate and are not allowed on AIMS or the Stanford 9 for students with a Section 504 Accommodation Plan.

Can a Section 504 Plan specify the use of a calculator as an adaptation?

No. If a student's problem is truly math calculation and he or she was not qualified for services under IDEA as having a severe discrepancy between ability and achievement, there is very little possibility of qualifying under 504 because, although the definition is broader, it is, in effect, more rigorous in this case because math is not learning globally.

Are Limited English Proficient students eligible for a Section 504 Accommodation Plan?

Students are eligible for accommodations under Section 504 for LEP only if their limited language acquisition is the result of a disability or impairment. Students who have exhausted their three-year LEP eligibility for adaptations do not automatically become eligible for the continuation of accommodations under Section 504. Accommodations are not determined by a student's ability, knowledge or skills.

Are environmental and/or cultural factors sufficient justification for accommodations under Section 504?

No. Environmental and cultural factors are correlates of disabilities. They are not disabilities.

On page one, you state that to be eligible for a Section 504 Plan, an individual must have a mental or physical impairment which substantially limits one or more of life's major activities and be regarded as having such an impairment. What does "be regarded as having such an impairment mean?"

Courts have rendered decisions that the person or persons who are "regarding others as having an impairment" must have the qualifications necessary to make the judgment. A school may not treat someone as if they were disabled unless they have procedurally determined that the person actually is disabled. Students may not enter school and ask for an accommodation claiming that they have, for example, dyslexia without clinical evidence to support the claim. Once the impairment has been identified, the Section 504 Team must determine if it is substantially interfering with a major life activity.

What advice can the Department of Education offer regarding AIMS and Section 504?

Remember that there must be documentation of an impairment that truly limits a student's ability. The documentation of a disability is dealt with by the documentation of an impairment and the substantial limitation of an ability caused by the impairment. Learning is only one of the major life activities that needs to be considered. Students with 504 disabilities in areas other than learning are more likely to need accommodations than those with disabilities in learning.

Section 504 is about providing equal access to educational opportunities through accommodations alone. Special Education is about providing equal access to educational opportunities for children with disabilities through services and programs, as well as accommodations and modifications.

Is this as complicated as it sounds?

Not at all. The procedures for a Section 504 plan for a student who qualifies for protection under Section 504 are similar to those followed for Special Education placement. Remember that you are looking for a disability and discrimination and a way to do something that "offsets" the effects of the discrimination and restores the student's chance to demonstrate all that he/she has learned.

Can you provide a list of adaptations that are allowable and not allowable?

Yes, but please remember that they are suggestions only. This is not a complete list.

ADAPTATIONS	
Examples of adaptations that are allowed for Section 504 Accommodation Plans.*	Examples of adaptations that are not allowed for Section 504 Accommodation Plans.
Accommodations: Changes that do not alter or fundamentally lower the standards or expectations of the test.	Modifications: Any change that fundamentally alters or lowers the standard or expectation of the test
Reading test directions	Out-of-level testing
Provide special lighting	Use of a spell checker
Secure paper to work area with tape or magnet	Use of a calculator
Provide adaptive or special furniture	Change in the content of the test
Administer test in a separate location	
Administer test in a small group	
Provide a slant board or a wedge	
Provide templates to reduce visual print	
Provide auditory amplification devices	
Sign oral directions using exact translation	
Provide scribe/tape recorder to record answers	
Provide large-diameter pencil	
Provide a word processor	
Provide headsets to muffle noise	
Pause during speaking	

\*The list of allowable accommodations is not complete and is not intended to limit a Section 504 Accommodation Team's attempt to assist a student.





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