

## **Section 504**

This section provides information and describes the requirements of Section 504 of the Rehabilitation Act of 1973 with respect to preschool, elementary and secondary school policies involving placement of children with physical and mental disabilities.

The Utah State Office of Education has developed a booklet entitled Section 504 Guidelines for Educators that explains how a student might be eligible for Section 504 services. A copy of these guidelines is available by calling the Utah State Office of Education (\*\*see if this is on-line, if so provide a link or get a copy and put it in PDF format.\*\*)

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

Section 504 is the part of the Rehabilitation Act of 1973 that applies to persons with disabilities. It is a civil rights act that protects the civil and constitutional rights of persons with disabilities. It is also seen as a *nondiscrimination* statute, prohibiting discrimination based *solely* on disability.

Section 504 states that no person with a disability can be excluded from or denied benefits of any program receiving federal financial assistance.

Section 504 and special education ([link to special education pages](#)) are two separate services. All school districts should have a Section 504 Coordinator to answer your questions.

### **Historical Background**

Section 504 of the Rehabilitation Act of 1973 was implemented by Congress in 1977. For many years, school districts perceived its main obligation as ensuring physical access to public buildings (e.g., ramps were installed, curbs were cut, elevators were added to multilevel buildings, restroom stalls were enlarged). Schools were at the same time committed to compliance with special education regulations now referred to as the Individuals with Disability Education Act (IDEA).

With passage of the Rehabilitation Act of 1973, Congress required that school districts make their programs and activities accessible and usable to all individuals with disabilities.

Within the last several years, the Office for Civil Rights (OCR) has become active in assisting school districts in further defining “access.” The definition of access means more than physical access; a student may require special accommodations, such as modified assignments in order to benefit from his/her education.

### **How does Section 504 define “Appropriate Education”?**

A free appropriate education is one provided by the public elementary or secondary school that includes general or special education and related aids and services that

1. are designed to meet the individual educational needs of a person with a disability as adequate as the needs of a person who is nondisabled are met and
2. are based on adherence to evaluation, placement, and procedural safeguard requirements.

**How does Section 504 define “Disability”?**

Section 504 of the Rehabilitation Act of 1973 protects persons from discrimination based on their disability status. A person is disabled within the definition of Section 504 if he or she:

- has a mental or physical impairment that substantially limits one or more of a person’s major life activities,
- has a history of such impairment,
- or is regarded as having an impairment.

“Major life activities” include functions such as

- caring for one’s self,
- performing manual tasks,
- walking, seeing, hearing, speaking, breathing, learning and working.

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

In order to determine eligibility for Section 504 accommodations or services, your child must be evaluated by a team of individuals who are familiar with your child and knowledgeable about the disability. The results will be shared at a team meeting in which you are involved.

**Special Education vs. Section 504**

	Section 504	Special Education
Type	A Civil Rights Act	An Education Act
Funding	Local funding	State-federal-local funding
Administration	Section 504 Coordinator	Special Education Director
Service Tool	Accommodations	Individualized Education Program
Disabilities	All disabilities if eligible	14 qualifying categories
Parents	Should be involved in all team meetings	Must be involved in all team meetings
Procedural Safeguards	Notice of consent of parents is required	Parent consent and notice required for initial evaluation, placement and reevaluation
Evaluation and Eligibility	An evaluation is necessary before it can be determined if a child is eligible under	

### **How are students with disabilities identified?**

Section 504 regulations cover a larger group of students with disabilities than does special education. The definition of disability under Section 504 includes students who have a physical or mental disability that substantially limits one or more of life's major activities.

For example, school staff should consider the potential existence of disabilities and possible Section 504 protection for students diagnosed as having HIV, Tourette's syndrome, attention deficit hyperactive disorder (ADHD), heart malfunctions, communicable diseases, urinary conditions, blood disorders, chronic fatigue syndrome, school phobia, respiratory conditions, blood/sugar disorders, post-traumatic disorders, pregnancy (with health issues that affect ability to learn), epilepsy, cancer, repetitive motion syndrome, birth defects, tuberculosis, etc.

### **Does Section 504 require evaluations?**

Section 504 requires that a school evaluate "any person who, because of a disability, needs or is believed to need special education or related services." An evaluation is also required prior to any significant change in placement. Most evaluations under Section 504 only involve gathering testing that has already been conducted, such as by a medical doctor. The evaluation data should be reviewed to determine if it is current or needs to be updated.

### **Eligibility**

If the school and/or parent have reason to believe that, because of a disability as defined under Section 504, a student needs accommodations or services in order to participate in the school program, the school must evaluate the student. If it is determined that a student is disabled under Section 504, the school must develop and implement the delivery of all needed services and/or accommodations.

### **Services**

The determination of what services and/or accommodations are needed must be made by a group of persons knowledgeable about the student and also about the disability. This usually involves the school principal, classroom teacher(s), and other educators working with your child. *The parent and student must be included in the process whenever possible.* The group must review the nature of the disability and how it affects the student's education. The decisions about Section 504 eligibility and services must be documented in the student's file and reviewed periodically.

An appropriate education for students eligible under Section 504 may consist of education in general classes with accommodations and programs designed to meet the unique needs of a particular student.

Modifications in academic requirements and expectations may be necessary to accommodate the needs of an individual student with disabilities to enable him/her to participate in the general education program.

It is important to keep in mind that some students who have physical or mental conditions that limit their ability to access and participate in the education program are entitled to accommodations or services under Section 504, even though they may not fall into a disabilities category covered under IDEA or special education.

### **What does making accommodations mean?**

Accommodations are modifications made by the classroom teacher(s) and other school staff to help students benefit from their educational program. In some cases, a written plan should be developed outlining services and accommodations.

#### Examples of Common Accommodations

- Modify assignments and tests.
- Provide an extra set of textbooks for home.
- Adjust student seating.
- Use study guides and organizing tools.
- Provide a peer tutor/helper.
- Provide counseling.
- Have the student use an organizer—train in organizational skills.
- Provide preferential seating.
- Modify recess/PE/transportation.

Accommodations need to take into account both the functional limitations of the individual and the alternative methods of performing tasks or activities to participate without jeopardizing outcomes.

- Accommodations must be individualized.
- The individual needs of the student with a disability should be met to the same extent as the needs students without disabilities.
- Accommodations should place the student with a disability at an equal starting level with the nondisabled student.

The following is an example of a student who is eligible for Section 504 services and possible accommodations provided by the school:

A student has been diagnosed as having asthma. The doctor has advised the student not to participate in physical activity outdoors. The disability limits the major life function of breathing. The school is required to make reasonable accommodation in the education program.

Possible Accommodations:

- Modified activity level for recess, physical education, etc.
- Use of air purifier or inhalants.
- Avoidance of allergens.
- Inhalant therapy assistance.
- Medication administration.
- Policy adjustment for personal administration of medications.
- Access to water, gum, etc.
- Curriculum considerations (science class, PE, etc.)
- Time of year—bus transportation in winter.
- Health care and emergency plan.

The school should develop a written plan describing placement and services. Service decisions must be based on evaluation information and student needs. The decisions must be made by a group of persons knowledgeable about the child, the disability, the meaning of the evaluation data and service options.

### **What are the school districts responsibilities under Section 504?**

There has been much confusion over the years regarding the relationship between Section 504 and special education laws and regulations. It must be emphasized that Section 504 falls under *the management responsibility of the general education program*. The school staff and parents need to work in collaboration to help guarantee that the student is provided with the necessary accommodations.

To be in compliance with Section 504, schools must:

1. Provide written assurance of nondiscrimination.
2. Designate a 504 Coordinator.
3. Provide grievance procedures to resolve complaints.
4. Provide notice of nondiscrimination in admission or access to its programs or activities. Notice must be included in a student/parent handbook.
5. Identify and locate annually all qualified children with disabilities who are not receiving a public education.
6. Notify annually persons with disabilities and their parents or guardians with procedural safeguards.
7. Provide parents or guardians with procedural safeguards.
8. Conduct a self-evaluation of school district policies, programs and practices to make sure discrimination is not occurring.

### **What are the responsibilities of parents?**

1. Share your concerns with the school early before they become problems.
2. Be involved in Section 504 meetings concerning your child.
3. Assist in developing appropriate accommodations and/or services for your child.
4. Encourage your child to cooperate with school staff and do his/her best.

5. Collaborate with other agencies, such as vocational rehabilitation, when appropriate.
6. Use mediation as an option if a difference cannot be resolved with the school.

### **What are the responsibilities of students?**

1. Be involved at Section 504 meetings, when appropriate.
2. Be familiar with your rights at postsecondary programs before graduating from high school.
3. Cooperate and put forth maximum effort at school.

### **Section 504- Parent/Student Rights In identification, evaluation, eligibility and services**

*The following is a description of the rights granted under Section 504 to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.*

You have the right to:

1. Have your child take part in and receive benefits from public education programs without discrimination because of his/her disability.
2. Have the school district advise you of your rights under federal law.
3. Receive notice with respect to identification, evaluation and services for your child.
4. Have your child receive a free appropriate public education. This includes the right to be educated with students without disabilities to the maximum extent appropriate. It also includes the right to have the school district make accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided to students without disabilities.
6. Have evaluation, education and placement decisions made based on a variety of information sources, and by persons who know the student, the disability, the evaluation data and service options.
7. Have your child receive special education and related services if he/she is found to be eligible under the Individuals with Disabilities Act or Section 504 of the Rehabilitation Act.
8. Have **transportation** (link to the transportation page) provided to and from an alternative placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.
9. Have your child be given an equal opportunity to participate in non-academic and extracurricular activities offered by the district.
10. Examine all relevant records relating to decisions regarding your child's identification, evaluation and educational services.
11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
12. Obtain responses from the school district to reasonable requests for explanations and interpretation of your child's records.

13. Request amendment of your child's education records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time and advise you of the right to a hearing.
14. File a **504 grievance** (link to grievance page) if you believe your child has been discriminated against by the school.
15. Request mediation or a Section 504 hearing related to decisions or actions regarding your child's identification, evaluation, education program or services.
16. File a complaint with the:

Office for Civil Rights, Region VIII  
U.S. Department of Education  
Federal Building, Suite 310  
1244 Speer Boulevard  
Denver, Colorado 80204-3582  
Phone: 303-844-5695

17. For more information about Section 504, contact:

Utah Parent Center  
2290 East 4500 South, Suite #110  
Salt Lake City, UT 84117  
801-272-1051 or 1-800-468-1160

Utah State Office of Education  
Educational Equity Section  
250 East 500 South  
Salt Lake City, UT 84111  
801-538-7647 or 801-538-7640

## **Parents as partners in the Individualized Education Program (IEP) process**

*Suggestions that will help you prepare to participate effectively in the IEP process.*

- Understand the laws governing special education and the provision of services to children with disabilities and the importance of your participation as an equal member of the team deciding what the education program will include.
- Prepare for the meeting to write the Individualized Education Program (IEP)
- Or Individualized Family Service Plan (IFSP) by gathering information about your child's special needs. Review files from previous programs that will help you plan more effectively for future programs and needs. If these records are not in your possession, ask to see them and obtain copies if necessary.

- Give copies of any independent professional evaluations you have to the special education teacher.
- Share the information you have prepared about your child, in advance if possible and ask to see the professional's also. Your information is important to help professionals on the team understand your child and determine her needs.
- After the meeting, be sure to follow up to see that the agreed upon program and services are being implemented. Monitor progress reports on IEP goals.

## Teambuilding

As we consider the relationship between the school and the family, it's important to think about building partnerships that result in an effective team.

As members of the Individualized Education Program (IEP) team, parents and the school are equal partners. As a team, school personnel and parents need to work together to accomplish the goal of identify and meeting the child's educational and support needs. We should not seek to gain more "control," "power," or "say so" than the other team members. In doing so, the focus on the child may be lost and the goal of designing an appropriate program may not be reached. The team's focus should be on **the needs of the child**.

Some barriers to effective team building include:

- communication problems
- a lack of understanding of the school system or the IEP process
- feelings of inferiority
- not understanding a child's disability
- devaluation of someone's input
- apathy
- stereotyping
- negative attitudes

Different barriers exist in different circumstances. Consider the barriers you might be bringing into a team meeting. For example: if a teacher comes to a meeting believing, "everyone knows that all parents are over-emotional and impossible to work with," that teacher will have difficulty working effectively with parents. If a parent comes to a meeting feeling that, "the school really doesn't care about my child," this too will create a barrier to an effective partnership. It is important to recognize barriers and then learn strategies for minimizing each barrier.

Occasionally situations arise in which parents and the school disagrees. If you are in a situation where there are already some negative feelings among team members, try to approach your next meeting with a clean slate, putting behind the negative things that have happened. At the beginning of a meeting, each person should assume the good faith of the other and the **joint commitment to one goal: meeting the needs of the child**. It can be useful to verbalize the concept of "beginning again" to the other team members.

Teamwork helps to strengthen relationships and to set a positive foundation for future relationships. When everyone is working together to develop individualized educational programs for children, exciting things can happen!

## **An Overview of Federal Laws that Impact your Child's Education**

### **Individuals with Disabilities Education Act of 1997 (IDEA 97)**

In the reauthorization of IDEA 97, Congress sought to improve the education of children with disabilities and to enable them to achieve a quality of education. IDEA 97 expanded and strengthened the parent's role in the education of their child with a disability.

#### **Definition of a Parent**

IDEA 97 expanded the definition of a parent. A parent is a natural or adoptive parent, a guardian, but not the state if the student is a ward of the state, a person acting in the place of a parent of a student (such as a grandparent or stepparent with whom the student lives, or a person who is legally responsible for the student's welfare), or a surrogate parent.

A foster parent may act as a parent if these conditions are met:

- the natural parents' authority to make educational decisions on the student's behalf has been extinguished,
- has an ongoing, long-term parental relationship with the student,
- is willing to make educational decisions required of the parents,
- has no interest that would conflict with the interest of the student.

#### **Six principles of IDEA 97**

The six principles of IDEA 97 are key to understanding the intent and spirit of the law. These include:

1. **Free appropriate public education (FAPE):** Means special education and related services are available to eligible children with disabilities age 3 to 22 and are to be provided at no cost to the parents. The specially designed education program and services reflect the child's individual educational needs and are to be provided in conformity with the Individualized Education Program (IEP). The provision of FAPE differs for each child, but the principle is the same. **FAPE** applies to all children with disabilities, including those who have been suspended or expelled from school.
2. **Appropriate evaluation:** gathers accurate information to determine eligibility and continued eligibility, as well as identify the student's strengths and educational needs. An individualized educational program is then designed to respond to the student's needs.
3. **Individualized Education Program (IEP):** A legally binding, written document that outlines the special education program services and related services based on the child's educational needs.

4. **Least restrictive environment (LRE):** the environment where the student can receive an appropriate education designed to meet his or her special education needs, while still being educated with nondisabled peers to the maximum extent appropriate.
5. **Parent and student participation in decision making:** IDEA 97 requires that parents must be given the opportunity to play a central role in the planning and decision making of their child's education. Parents must have the opportunity to participate in meetings regarding identification, evaluation, educational placement and the provision of FAPE to the student. Student rights and participation are expanded and encouraged, particularly when addressing transition planning.
6. **Procedural due process:** Safeguards designed to protect the rights of the parents and their child with a disability, as well as give families and schools a mechanism for resolving disputes.

### **Early Intervention**

Part C of IDEA 97 provides service to infants and toddlers who have disabilities and their families. Utah has designated the Health Department as the lead agency for the 0 to 3 year age group of children with special needs. Services for this age group are called Early Intervention. Early Intervention services are family-centered, multidisciplinary, comprehensive and community-based and honor the values and beliefs of the family. The specific early intervention services are written in an Individualized Family Service Plan (IFSP), which is based on the concerns and priorities of the family.

### **Special Education**

Part B of IDEA 97 outlines the special education process which is available from age 3 through graduation or to age 22. This includes special education preschool, which serves children with disabilities who are ages 3 to 5. The Utah State office of Education is the lead agency responsible for overseeing special education. The specific child identified educational needs and services are written in an Individualized Education Program.

### **Parent's rights and responsibilities**

1. Parents have the right to provide information and be involved in the evaluation process. Parents can be involved in the review of existing evaluation information during the initial evaluation and re-evaluation of their child.
2. Parents have the right to be a part of the group that makes the decision regarding their child's eligibility for special education services.
3. Parents have the right to be a part of the group that makes the decision regarding their child's educational placement.
4. Parent must be given the opportunity to participate in meetings held with the respect to the identification, evaluation and educational placement of their child, and the provision of FAPE to their child. School personnel may have informal meetings without the parents.

5. Parents have the right to receive regular reports on their child's progress as often as the school notifies parents of students without disabilities. The IEP would need to be revised to address any lack of progress toward annual goals.
6. Parents must notify the school or school district, if they intend to remove their child from the public school and place the child in a private school at public expense.

If parents (or their attorneys) do not provide this notice in writing, reimbursement from the private school placement may be reduced or denied. There are certain exceptions to this provision.

Parents must tell the school or district:

- That they are rejecting the placement that the school district is proposing for the child.
- What their concerns are; and
- That they intend to enroll their child in a private school and expect public education to pay for it.

### **Student's Rights and Responsibilities**

1. Students have the right to be involved in determining their transition services, which are based on individual student needs, preferences and interests.
2. Transition planning will begin for the student with disabilities at age 14. A statement of transition service needs must be written into a student's IEP at age 14. The IEP team, including the student (when appropriate), looks at what courses the student is taking and considers what additional classes are necessary, such as advanced-placement courses or a vocational education program, based on the student's goals for life after high school. At age 16, a statement of needed transition services, including an interagency responsibilities or linkages must be included.
3. On the student's 18<sup>th</sup> birthday, parental rights transfer to the student. At least one year before the student's 18<sup>th</sup> birthday, a statement is required on the student's IEP, that the student and parents have been informed of the transfer of rights. Parents may want to consider guardianship options, at least for educational programming, if they believe the student does not have the ability to provide informed consent about educational decisions. Otherwise, parental rights **will** transfer to the student.

Note: Students at Charter Schools have the right to FAPE. Private schools are not required to provide FAPE. However, some services may be available at private schools. The amount and kind of services are determined by the school district and the student would have a "service plan" rather than an IEP.